1-231 Field J.

Feb. 12th 1895

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22-231

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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~476.~~ 191

JAMES S FRENCH, APPELLANT,

vs.

ALEXANDER HAY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED SEPTEMBER 17, 1873.**

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1 *Original bill in equity—Filed July 13th, 1868.*

Supreme court District of Columbia.

ALEXANDER HAY
*vs.*
JAMES S. FRENCH.

To the honorable the supreme court of the District of Columbia, sitting in equity:

James S. French, of Alexandria, in the State of Virginia, brings this bill of complaint against Alexander Hay, and states to your honors that, some time in the year 1859, your orator being desirous of buying up the outstanding indebtedness of the Alexandria and Washington Railroad Company, and not having of his own resources sufficient capital for that purpose, applied to said Alexander Hay, who was at that time the intimate personal friend of complainant, and was reputed to be a man of large wealth, to advance money for the purchase of said debts, proposing to have such debts and claims as might be bought with the money of said Hay, transferred and assigned to said Hay, to hold for his own benefit, the object of your orator (who was at that time president of said company, and deeply interested in the success and prosperity of the same,) being to concentrate the indebtedness of said company in the hands of one friendly creditor, and to avoid its being held by divers persons, who in many instances would be unable or unwilling to defer payment of their claims for such time as the interest of said company required. And your orator further states, that as an investment of capital, the purchase of the debts of said company was a safe and profitable one to any person of sufficiently easy circumstances pecuniarily to be able to abide the time of said company's ability to pay its debts.

And your orator states that, moved by the foregoing considerations, the said Alexander Hay consented and agreed to advance the necessary money to your orator to purchase the outstanding debts of said company, and did actually advance to your orator for that purpose about five thousand dollars, and authorized your orator to buy in
2 said debts accordingly, and that your orator did, in pursuance of said arrangement, in the year 1859, and winter and spring of 1860, buy up the indebtedness of said company to the amount (without interest) of about thirty-one thousand dollars, a list of which debts and claims is specifically set forth, as reduced to judgments and embodied in the paper hereto annexed and marked Exhibit A, and which your orator prays may be considered a part of this bill, to which your orator begs leave to refer. And your orator states that in the purchase of said debts, wherever the same were debts of record, that is to say, judgments against said company, the said judgments were assigned to said Hay, and that wherever the said debts were not already reduced to judgments, they were assigned to said Hay, and afterwards reduced to judgments in his name and favor against said company, and that the said Exhibit A contains a correct list of the same, all in form of judgment. And your orator further states in the purchase of said claims, he employed and paid, out of the money of said Hay, something less than five thousand dollars and no more, and that said Hay never furnished, or advanced, or invested any further sums of money for the purpose aforesaid. And your orator avers that all the money over and

above said $5,000, paid out in purchase of said debts and claims embraced in said Exhibit A, was furnished and paid out by your orator, out of his own proper moneys and resources, in the expectation that the same would be repaid or otherwise satisfactorily accounted for and adjusted by said Hay, on a settlement, he being absent for the most part when such purchases were made. And your orator further states that afterwards, said Alexander Hay having come to the conclusion to invest his available capital in other enterprises, transferred, and assigned, and relinquished to your orator all of the said claim and debts o n said company so purchased as aforesaid, reserving the repayment to him, the said Hay, of the sum of five thousand dollars for and to cover his advances in the premises.

And that said transfer was made and evidenced by two certain instruments in writing, the one being a power of attorney dated the 24th day of August, 1860, and duly executed by the said Alexander Hay, a copy of which is hereto annexed, marked "B," as an exhibit to this bill, and which your orator prays may be considered a part of the same, and to which he begs leave to refer, and the other being an assign-
3 ment of even date with said power of attorney, and which was executed at the same time with said power of attorney, and a copy of which is hereto attached, marked "C," as an exhibit to this bill, and which your orator prays may be considered a part hereof, and to which he asks leave to refer. And your orator alleges that by virtue of the premises, your orator became and was the owner legally and equitably of all the said judgments, debts, and claims against the said railroad company, and that your orator became and was indebted to said Alexander Hay, and bound to him for the payment of the said sum of $5,000, with legal interest thereon, and no more. And your orator shows and states to your honors that soon after the facts hereinbefore stated and set forth transpired the civil war broke out, and the family of your orator, who then resided in the city of Alexandria, Virginia, being on a visit in the State of North Carolina, your orator went in haste to bring them home, leaving his house, furniture, papers, and the most part of his wearing apparel and that of his family, in the custody of an agent, and expecting and intending shortly to return, not proposing to be absent at the utmost longer than a few weeks. And your orator further states that such was the course of public events, and the great disorder and confusion arising from a state of war, that he was unable to return to his house in Alexandria, and did not return until the close of the war; but he avers and states that he in no manner whatever participated in the rebellion, neither by serving in a military nor civil capacity; but procuring a small piece of land, obtained a livelihood for himself and his family by tilling the soil in the State of North Carolina. And your orator further states, that during his absence as aforesaid the said Alexander Hay, defendant herein, without the knowledge or consent of your orator, and without right, availing himself of his apparent legal title to said claims and judgments, mentioned and set forth in Exhibit "A" to this bill, in fraud of the rights of your orator, and against equity and good conscience, did collect all the said judgments and claims, and did convert and appropriate the proceeds thereof to his, the said Alexander Hay's, own use. And your orator avers and charges that all of said moneys, after deducting the $5,000 due as aforesaid to the said Hay, of right belongs to your orator, and are now held by the said Hay in trust for your orator in equity and good conscience. And your orator prays that the said A. Hay may be required full, true, and perfect answer to make to this bill of complaint, as though

4 particularly interrogated separately of each distinct and material allegation herein, and that he render an account of all the judgments and claims against the said company collected by him, said A. Hay, embraced in the said list, Exhibit "A," with the time of realizing the same, and the profit thereon, and that an account be taken of the same under the order of the honorable court. And that your honors will order, adjudge, and decree to be paid to your orator all of said sums of money, judgments, and claims, and all profits arising therefrom in the hands of the said A. Hay, with interest, after deducting the sum of $5,000, with any interest due thereon, so as aforesaid advanced by the said Hay, and the repayment whereof was reserved in the said assignment hereinbefore stated and set forth. And that your honors will grant to your orator the United States writ of subpœna, directed to the said defendant A. Hay, as requiring him at a day certain to appear and answer hereto, &c. And that your honors will grant unto your orator such other and further relief as to your honors shall seem expedient and just. And your orator will ever pray.

JAMES S. FRENCH.

HUGHES, DENVER, & PECK,
*Solicitors and Counsel for Complainant.*

5 COMPLAINANT'S EXHIBIT A.

Abstracts of judgments in the circuit court of Alexandria County, Virginia, vs. The Alexandria and Washington Railroad Company, assigned to Alexander Hay, and of judgments given said Hay by confession vs. said company.

[SEAL.]

THO'S W. WASSON, LEVI O. HANSON, GEO. C. Fisk, and Josiah Burnstead, merchants and copartners under the style and firm of T. W. Wasson & Co.,
*vs.*
ALEXANDRIA AND WASHINGTON RAILROAD CO.

Judgment November term, 1857, $6,706.70. Interest on $1,218.01, part thereof from February 5, 1857, till paid; and on $1,223.98 from March 5, 1857, till paid; and on $1,229.95 from April 5, 1857, till paid; and on $1,235.92 from July 8, 1857, till paid; and on $1,241.89 from July 29, 1857, till paid; and on $556.95, the residue, from August 8, 1857, till paid, and damages and costs, $10.42.

(Marked:) "Benefit of Al'x'r Hay, Brent & Kinzer," plaintiffs' attorneys.

November 30, 1865. (Entered:) Satisfied by order of Al'x'r Hay.

ALEXANDER HAY, ASSIGNEE OF F. L. SMITH,
*vs.*
SAME.

Judgment confessed in clerk's office March 21, 1860, for $1,000. Interest from September 8, 1859, till paid. Debt and $6.50 costs.

ALEXANDER HAY, ASSIGNEE,
*vs.*
SAME.

Judgment confessed in clerk's office March 21, 1860, $16,607.87. Interest from May 4, 1857. Debt and $6.50 costs.

SAME
*vs.*
SAME.

Judgment confessed in the office March 2, 1860, $2,290.04. Interest on $534.42, part thereof, from January 2, 1856, till paid; and on $378.27, another part thereof, from April 1, 1856, till paid; and on $536.18, another part thereof, from July 23, 1856, till paid; and on $451.93, another part thereof, from September 7, 1856, till paid; and on $389.24, the residue thereof, from October 4, 1856, till paid. Debt and $6.50 costs.

[5-cent revenue stamp.]

MORRIS & TANNER
*vs.*
SAME.

Office judgment, May term, 1859, $437.17. Interest from March 7, 1856, till paid. Debt and $7.65 costs.

November 30, 1865. (Marked:) "Satisfied, by order of Alex'r Hay, assignee of plaintiffs."

SAME
*vs.*
SAME.

Off. judgment, May term, 1859, $2,410.87. Interest on $1,205.43 from February 6, 1856, till paid; and on $1,205.44 from June 6, 1856, till paid. Debt and $7.65 costs.

November 30, 1865. (Marked:) Satisfied, by order of Alex'r Hay, of plaintiffs.

VIRGINIA, *Alexandria County, to wit:*

I, Jefferson Tacey, clerk of the circuit court for Alexandria County, State of Virginia, hereby certify that the above six abstracts are true, and taken from the records in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court this 25th day of June, 1868.

[SEAL.] JEFFERSON TACEY, *Clerk.*

Abstract of judgment in Alexandria County court, Virginia, assigned to Alexander Hay.

T. W. WASSON & CO.
*vs.*
THE ALEXANDRIA AND WASHINGTON R. R. CO.

Judgment February term, 1858, $1,243.64. Interest on $1,241.89 from April 27, 1857, till paid. Debt and $9.64 costs.

(Marked:) Benefit Alex'r Hay, by order Brent & Kinzer, plaintiffs' attorneys, September 1, 1859. Satisfied, per order Alex'r Hay, November 30, 1865.

VIRGINIA, *Alexandria County, to wit:*

I, Jefferson Tacey, clerk of the county court for the county of Alexandria, in the State of Virginia, hereby certify that the above is a true abstract from the records in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court this 25th day of June, 1868.

[SEAL.] JEFFERSON TACEY, *Clerk.*

[5-cent revenue stamp.]

6 COMPLAINANTS' EXHIBIT B.

To all whom it may concern:

Be it known, that I, Alexander Hay, of the city of Philadelphia, do hereby constitute and appoint James S. French, esq., Alexandria, Virginia, my true and lawful attorney, for me, and in my name, to make such disposition as he may deem proper of all the judgments, notes, or claims which I hold against the Alexandria and Washington Railroad Company, or against said company, endorsed by James S. French and Walter Lenox, or by either of them; to take all necessary steps for collecting the same, or to pledge or hypothecate the same, or compromise or sell the same, upon such (terms) as he shall deem proper, or do with them whatever he shall choose as fully as if they were his individual property. And I do hereby, by these presents, ratify and confirm the same as fully as if I were present acting in person.

Given under my hand and seal this 24th day of August, A. D. 1860.

[SEAL.] ALEXANDER HAY.

Witnesses: ANDREW J. BOSWELL,
THOMAS HAY.

CITY OF PHILADELPHIA:

Personally came before the subscriber, one of the aldermen and justices of the peace in and for the county aforesaid, this 15th day of September, A. D. 1860, the within-named Alexander Hay, and in due form of law acknowledged the within instrument to be his act and deed, as such to be recorded.

Witness my hand and seal this 15th day of September, A. D. 1860.

[SEAL.] ANDREW J. BOSWELL,
*Alderman.*

COMPLAINANTS' EXHIBIT "C."

For and in consideration of the sum of five thousand dollars with interest from this date, I hereby assign and transfer to James S. French, of Alexandria, Va., all the judgments, notes, or claims, which I hold against the Alexandria and Washington Railroad Company, or against said railroad company, endorsed by James S. French and Walter Lenox, or by either of them, to be held by the said French, his heirs and assigns, as his individual property, upon his payment to me of the above-named sum of $5,000, with interest from this date.

Given under my hand and seal this 24th day of August, 1860.

(Signed) A. HAY.

Witness: THOMAS HAY.

7 In the supreme court of the District of Columbia, July 13, 1868.

JAMES S. FRENCH, COMPLAINANT,
*vs.*
ALEXANDER HAY, DEFENDANT. } No. 1337. Equity docket 9.

The President of the United States to Alexander Hay, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness:

D. K. CARTTER, *Chief Justice.*
R. J. MEIGS, *Clerk.*

*Memorandum.*—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

*Marshal's return upon subpœna to answer.*

Summoned.
(Signed)
JULY 15, 1868.

D. S. GOODING, *Marshal.*

8 *Answer of Defendant.—Filed Sept.* 19, 1868.

In the supreme court of the District of Columbia—in equity.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY. } Answer of defendant and cross-bill against complainant.

9 The defendant, Alexander Hay, now and at all times hereafter reserving to himself all and singular the errors, insufficiencies, and misstatements in the bill of complaint of said James S. French contained, for answer to said bill, or so much of it as he is advised it is material for him to answer unto, answering, says:

This defendant denies each and all of the allegations and statements of matters and things alleged and charged as facts in said bill of complaint, excepting such as are hereinafter admitted or qualified.

Defendant denies that the judgments and claims against the Alexandria and Washington Railroad Company, purchased and paid for by this defendant, was for the benefit of the said James S. French, or that he paid any part of the consideration or money expended and advanced by this defendant in the purchase of the same; all of which allegations are contained in said bill of complaint.

And this defendant further denies that when said French left Alexandria, Virginia, in the month of May, 1861, he did so for the purpose of going to North Carolina to bring his family back to Alexandria, as falsely and deceitfully stated in said bill of complaint; on the contrary, this defendant states and charges that the departure of said French at the time was the result of premeditated design, which he had been preparing to consummate for a long time previous, and with the view of defrauding this defendant and others, as this defendant will show unto this honorable court.

Defendant further states that the said French, in 1859, and previous thereto, was a clerk in the Patent-Office in the city of Washington, and that he had little if any means of subsistence save such as he received as a salary from the United States Government as clerk in said Patent-Office, and that any statement to the contrary is wholly false.

And the defendant further answering says, that during or previous to the time that said French was employed and acting as such clerk, to wit, about the year 1854, that said French, associating with himself Walter Lenox and others, procured from the legislature of the State of Virginia a charter for a railroad from Alexandria, Virginia, to a point opposite to the city of Washington, but had no charter from Congress to cross the Potomac River, or to bring said road into or through the District of Columbia.

That neither said French, nor Lenox, nor their associates, had either the capital, resources, or credit for building said road, except such as they should be able to secure from the assumed importance and value of the proposed road itself; that before said road was commenced, or even a right of way secured between Alexandria and its terminus opposite the city of Washington, that a deed of trust was executed to the city of Washington to the sum of sixty thousand (60,000) dollars, to secure the said city for guaranteeing that amount of certificates of debt to be issued, and which were forthwith issued by said company, or by said French and Lenox, who made said debt without any other authority on the part of said company save such as they assumed to exercise, and that said company was made to commence paying interest on a debt of sixty thousand (60,000) dollars before the road itself was commenced.

That a second deed of trust was executed to Fowle, Snowden & Co. for about fifteen thousand (15,000) dollars.

And a third deed of trust to Lenox, its trustee, to secure coupon bonds, sold to one Benjamin Thornton, of England, to the amount of thirty thousand (30,000) dollars: that a bonded and deed trust of debt to the amount of one hundred and five thousand (105,000) dollars was existing before the road commenced to earn the first dollar.

That besides this bonded debt of one hundred and five thousand (105,000) dollars, bearing interest, there was a floating debt of forty thousand (40,000) dollars created for the rolling-stock, material, and supplies used in building said road, making a fixed debt of one hundred and forty-five thousand (145,000) dollars, or thereabouts, besides other miscellaneous debts to laborers and employees.

That all the capital which was in the road was on credit, and was an interest-bearing debt, and that what did not exist in the shape of ascertained debts was outstanding in the shape of sums of money borrowed or procured in some way on the ascertained value of said road, or promised in the stock, or benefits to be derived from it at a future time.

And the defendant further states, that soon after he became acquainted with said French, that said French commenced a system of borrowing and drawing money from the defendant, all to be applied in building said road, and at some future time to be paid back out of the stock, but which was never done, and the defendant learned, when too late, that it was not the intention of the said French ever to pay it or provide for it in any way.

But the defendant, unfortunately for himself, did not believe the said French was but a common cheat, while the defendant fully believed that a link of road connecting all the railroads leading North and South by the way of Washington City would and

must prove a valuable property, if properly constructed, with a charter from Congress to cross the Potomac, and pass through the District of Columbia; and therefore said defendant continued to be imposed upon by assurances and promises made by said French, and was induced to keep advancing sums of money; that among the promises so made by said French, was that he had it all arranged to secure a charter from Congress to use the bridge across the Potomac River, and pass through the District of Columbia; that the said French and Lenox had it so arranged with the city of Washington as to get rid of the sixty thousand (60,000) dollars debt aforesaid, or to secure its release for a small sum of money; that the road was in good condition, and all working well.

But defendant states that the whole of these statements were false.

That the road itself was badly graded, with a still worse superstructure, it being laid on what is called stringers, with scrap or flat iron rails of mixed description and quality, and was rapidly going to decay; that it was not earning its working expenses, with nothing for repairs or renewals, and was not paying the interest on any part of the bonded debt or those secured by deed of trust; that in the mean time the floating debt of the company was reduced, or being reduced to judgments, and the road was liable to be sold under execution any day, and was being proceeded against by Fowle, Snowdon & Co., who, but for technical defenses, and a contest with the corporation of Washington, which delayed the result, would have had a decree of sale under their said deed of trust; that at this stage of progress of proceedings against said road by its multitude of creditors, the said French made persistent appeals to defendant to purchase the said judgments and claims against it as set forth in complainant's Exhibit A, (which defendant, assuming to be a correct transcript of the records of the courts of Alexandria, admits to be true,) and said complainant stated as an inducement, that in view of the heavy debts and incumbrances taking precedence of said debt named in complainant's Exhibit A, they could be purchased at a small price, and then, by pursuing the course indicated by said French for having the road sold and purchased by this defendant, a profitable investment might be made.

12 That defendant, not seeing how he or said Day was to get any portion of the money they advanced to said French for said road, unless defendant did take hold of the road himself, agreed to purchase said debts and judgments in Exhibit A, aforesaid, provided it could be at the prices named by said French.

That the money advanced by defendant was a much larger sum than is set forth in said bill of complaint, and was more than the sum for which defendant afterwards agreed to sell said judgment to said French, or any one else, as this defendant will hereinafter fully show unto this honorable court; and defendant, further answering, states, that moved in part with a view to saving money already advanced to said company, as aforesaid, and being further influenced by the flattering assurances of future and certain value in said road by said French, this defendant did, in the year 1859, provide and advance the money to purchase the judgments set forth in said Exhibit A, and some others which never were assigned to the defendant, but which were appropriated by the said French to his own convenience and use; and that especially was that the case with a large claim of twenty thousand dollars ($20,000) in favor of J. R. Anderson, which was paid by this defendant's money, and was reported to defendant as being in good faith assigned to him, but which, like many other things, proved to be false, and it does not appear in complainant's said Exhibit A.

But defendant denies that said French ever paid or advanced one dollar, either directly or indirectly, in the purchase of and payment for the judgment and claims named in Exhibit A, or that he had any vested or stipulated interest in the same.

And defendant further denies that said French paid or contributed any part of the means for purchasing any other judgments or claims, including the said large debt of twenty thousand ($20,000) dollars in favor of said Anderson, except he may have conveyed certain tracts of land, and then appropriated to himself the assumed value of said land out of the money this defendant had placed in said French's hands to purchase said claims to be assigned to this defendant, which facts of record show he did not do.

Defendant further answering, states that after placing said large sum of money in the hands of said French to purchase said claim for this defendant, he never could get said French to render this defendant
13 an account of what sums of money he did pay or was expending, and was compelled to accept his word or such representations as he chose to make.

But defendant states that said purchases were all completed as early as about the month of September, 1859, including the said debt of twenty thousand ($20,000) dollars of said Anderson, and that there was still a surplus of money on hand, as will appear by a partial statement of the judgment and claim purchased, but which does not show the amount paid, and which showed that all was then procured and assigned, except the turnpike matter and the city of Washington debt to be provided for, which statement rendered to this defendant, under date of September 9th, 1859, is by a correct copy made part hereof, marked Exhibit H, No. 1.

Defendant further answering, states that soon after advancing said money to said French to purchase said claims, and being thus committed and bound to the transaction, that said French commenced a scheme for the purchase at once of the debt of the corporation of Washington and said turnpike debt, which was manifestly designed, besides the large sums of money already advanced by the defendant, to involve him in large personal debts or obligations which would place this defendant's interest completely at the mercy of said French or those whom he could by the use of this defendant's capital and obligations advanced, at any time bring him, and for that purpose kept up a voluminous correspondence with the design of entrapping this defendant into such personal obligations.

The letters or communications addressed to this defendant were frequently without date, or if dated, designated no place from where they were written, and were generally without the name of the writer, and were always such as to impose real burden or responsibility on the part of this defendant and no one else, as will more fully appear by two separate communications in the handwriting of said French, the one headed "Confidential," and the other marked "July 2d," and neither signed, but both received by this defendant from said French, copies of which are prayed to be received as part of this answer, marked Exhibit H, No. 2, and H, No. 3.

But the defendant declined in engaging in any such ventures, or making any transaction that was not to be paid for in cash, as he had
14 done in the purchase of the said judgments named in complainant's Exhibit A, as aforesaid.

And defendant further answering, states that after purchasing and paying for said judgments as aforesaid, and advancing from time to time

various sums of money to said French to aid his movements in managing said road, defendant became convinced that said French was either wholly deceived himself or was systematically seeking to defraud and deceive this defendant to a most shameful extent, and determined to advance no more money even if he should loose what he had already advanced. And the defendant was the more forced to adopt this course for the reason that he discovered that it was untrue that said road was earning its working expenses, much less paying any of its debts, as was stated by the said French it was doing, and would do at the time this defendant embarked so largely in purchasing said judgments, and that there was no reasonable probability *that* the affairs of said road improving to such extent as to be able to sustain itself in working condition for any considerable length of time.

That when defendant thus ceased to advance money as he had been doing, the said French exhibited great dissatisfaction, and made some serious and threat'ning complaints, and addressed this defendant another and quite characteristic letter, headed Monday morning, and not signed, a copy of which letter defendant makes part of this answer, marked Exhibit H, No. 4. And defendant submits that this paper, written by said French, shows that at its date, whatever it was, that said French did not pretend to be the owner of said judgments or was interested therein, but was wholly working for the protection of the interests of this defendant which it grieved him much to see imperilled or sacrificed by a sale under a judgment, which though only amounting to one thousand ($1,000) dollars, was a larger sum than said French could pay, or that the credit of said road or company could command, and was hence forced to appeal to this defendant.

That after this defendant declined being led into further advances of money for said road, the said French proposed to pay this defendant the sum of five thousand (5,000) dollars in cash for the said judgments set forth in said Exhibit "A," which defendant was quite willing to accept, as he was then well convinced that he could never realize any benefit from said road in connection with said French and those about him.

15 But that said French, instead of paying the said defendant the money, said he could raise it or get it advanced by others, and for that purpose requested this defendant to execute said Exhibit "B" and "C," as set forth in said bill of complaint, which, presuming them to be corrected copies of the originals, defendant admits to be true.

But defendant states that when he executed said paper, that it was with the assurance on the part of said French that said sum of five thousand (5,000) dollars, with the interest thereon, to be paid at an early day, and certainly within a reasonable time from and after the date of said agreement "C" and power of attorney "B," and was not to be postponed indefinitely, or to give said French or any one else indefinite control over so large an interest of this defendant without its being paid for as agreed. But the defendant states that the said money or any part was never paid or tendered to this defendant by the said French or any one else.

That instead of said money being paid, the said French commenced applying to this defendant for further favors and more money. That about the month of October, 1860, the said French wrote another letter, with neither date nor name, headed, "My dear sir," and stating that "The stock of the turnpike about which we have bothered so much is to be sold on the 1st of November," and enclosed another letter of his peculiar composing, which he wished this defendant to copy into his handwriting and addressed to "William H. Fowle, esq.," the object of

which two letters will fully appear when read together, copies of which defendant files herewith, marked Exhibit H, No. 5, and H, No. 6.

Defendant does not remember whether he complied with said request or not, but believes that said turnpike stock was sold.

Defendant further answering, says that he, becoming dissatisfied with the non-payment of five thousand (5,000) dollars by said French, he so expressed himself to said French, who then stated that the impression having got abroad that the said road would have to stop working, he could not get the money on the judgments or in any other way to pay the defendant, but that if defendant would aid him with money to buy horses and omnibusses, to be purchased and held in the name of this defendant, whereby to keep the road running, and by defendant thus still supporting said road with his means and credit, that the said
16 French could get the money to pay defendant, and that the said omnibusses being purchased in the name of the defendant, would make him safe in that respect.

That the defendant, moved by the appeals and assurances of said French, did advance him about the sum of three thousand (3,000) dollars to purchase said omnibusses, but that none were purchased, nor was the money returned to this defendant, but was fraudulently appropriated by the said French to his own use and benefit.

That defendant seeing there was no prospect of his ever getting anything out of said road or said French, determined to take steps to have said road sold on some one or more of said judgments, subject to said deeds of trust, and see if it were possible to make said road useful or productive of any good whatever by a change in its management.

That about this time the rebellion commenced in the South, was espoused by the State of Virginia, and soon resulted in rendering it unsafe, if not impossible, for one not in sympathy with the rebellion to have access to Alexandria, and said French no longer exhibited any disposition to do anything to relieve this defendant, and was only heard from by letters, which, while they sought favors from this defendant, never even alluded to this road; but defendant did not for a moment suppose that said French was doing anything to injure the chances of this defendant getting at least some part of the money he had advanced to said road.

But defendant states, and charges the fact to be, that said French, sheltering himself under the rebel army then assembled at Alexandria, did, on or about the 1st of May, 1861, cause a tram-road or track to be constructed, connecting the said Alexandria & Washington Railroad with the Orange & Alexandria Railroad, and by his own orders caused all the said rolling-stock, which constituted the basis and material part of the value of the said judgments purchased by this defendant, to be removed, and going with it himself, took it off to dispose of, and did sell and dispose of it to the rebel government, and appropriated the consideration he obtained for it to his own use, leaving nothing of value about the said road which could be moved, taking all away that was of any value; that the only thing that remained of the said road was its track mounted with its decayed stringers and scrap-rails.

And defendant charges that complainant thus robbed said road of its rolling-stock deliberately, and with the intent of defrauding this
17 defendant and others; that though he addressed this defendant several letters while at Alexandria, before he absconded with said rolling-stock in April and May, 1861, asking various favors and extended confidence from this defendant, expressing great interest in his welfare, yet he never once hinted that he was going to strip said road

of its rolling-stock, though it was manifest, from his said letters, that his whole heart was in the rebellion, and that he favored the acts of secession, and meant to unite his fortunes with it. Defendant exhibits herewith five of said letters, and prays that they may be read as part of this answer, marked Exhibit H, No. 7, H, No. 8, H, No. 9, H, No. 10, and H, No. 11.

That as soon as defendant could get access to Alexandria, he sent his attorney to look after his interest in said road, when defendant learned the fact above stated that French, the complainant, as his letters had prepared this defendant to learn, had gone South with the retreat of the rebel army, and had also taken the rolling-stock, and all other moveable property belonging to said road with him, and sold it to the rebel government and applied the proceeds to his own use as stated.

That, at the time this occurred, there were no civil courts open in Alexandria County, whereby the defendant could secure any relief, and there was none until about the month of January, 1862; that as soon as there was a court in said county this defendant took steps at once to protect his rights as best he could, and to have said road sold under some one of his judgments, and purchased it in so as to protect himself and save said road from being confiscated as rebel property on account of the conduct of its recent ostensible owners; that while this defendant was preparing to do this the agents of the said Benj. Thornton, of England, appeared and took such steps as to cause said road to be sold under a deed of trust, when this defendant, in self-defense, purchased it at public sale, on or about the 10th of April, 1862, and formed a new corporation as provided by the laws of Virginia.

And defendant, further answering, says that while it is certainly true that, but for the amount of capital which he had advanced and paid unto said Alexandria and Washington Railroad Company, he would not have purchased said road at said sale, that it is equally true that his being the owner of said judgments furnished him no assistance in making said purchase, either in the way of capital or credit,
18 for reconstructing said road after the formation of said new company as aforesaid.

That after said purchase at public sale, and the title to said road vested in this defendant, and thereby merging into said road the said judgments against it, defendant directed his counsel to make the same satisfied on the record, which he presumes was done, but denies that he ever collected or received one dollar or the fraction of a dollar on said judgments or either of them, or derived any benefit whatever from said road, except such as he was so fortunate to secure as a purchaser at such public sale, and at which this defendant had a right to bid in common with any one else, including the said French himself had he chosen to be present and bid; that defendant had a perfect right to make the best use of his position he could, without thereby incurring any liability to account to said French, to whom this defendant is in no way accountable, but, on the contrary, has just and legal demands against the said French for his cheats and frauds upon this defendant, as will hereafter be more fully stated and insisted upon before this honorable court.

And defendant further states that it is not only false and untrue, as before stated, that said French had any vested interest in said judgments in Exhibit A, but that it is not true that said French acquired any legal or equitable interest in the same by reason of his said Exhibits B and C; that said French, as president of said road, was a trustee,

and could not acquire any individual or personal title to said judgments, which could be asserted or maintained in a court of law or equity; that there was no consideration paid to this defendant for the execution of the said agreement, Exhibit C, but only a promised consideration of five thousand ($5,000) dollars, with interest, which was not paid, and without the payment of which no title vested in the said French, even if it had been lawful for him to acquire a title or personal interest in said judgment in any event; that said Exhibit C is an executory agreement, and, unless complied with, carried with it no rights whatever.

And defendant states that the same never was complied with by the said French, who, by his own acts under it, render' it impossible to comply with it, whereby it ceased and became null and void of any legal or equity effect whatever. And this defendant, further answering, submits and insists that said Exhibits B and C form part and parcel of one and the same agreement, and at their creation constituted the
19 said French the trustee and agent of the said defendant to dispose of said judgments in his said Exhibit A, upon the terms designated; that the said trust and agency, if not previously extinguished by his laches, was abandoned by the said French when he voluntarily went South, and thereby rendered it impossible for him any longer to protect the interests of this defendant or perform his said trust, whether he aided or abetted in the rebellion or not, and the right of this defendant to control his said judgments stood precisely the same as if said papers, complainant's Exhibits B and C, had never been executed.

But this defendent, further answering, states and charges the fact to be that said French went South not to return, as falsely represented, but to stay there, and he did stay and aid the rebellion, not to bring his family back, but to keep them where he had sent them in advance for that purpose.

That he was preparing to join in the rebellion when he addressed the defendant the said letters, marked Exhibits H, Nos. 7, 8, 9, 10, and 11.

That at or during the time the said French wrote these letters expressing false assurances of interest in the welfare of this defendant, he was at same time engaged in destroying the interests of this defendant by fraudulently removing, to be taken with him South, the engines, cars, and other movable property of said road, a preparation not at all necessary to bring back his family "in a few weeks at most," as falsely and deceitfully alleged in said bill; but that having sent his said family in advance, he was going himself to stay, as he did stay, and was robbing defendant and others out of their rights and property with a view of selling it to the rebel government and putting the proceeds into his own pocket, which he did.

And all those falsehoods and frauds were perpetrated on the part of said French with a firm belief, as expressed by him in advance in his correspondence, as exhibited in this answer, that the rebellion would succeed and the Union be dissolved, as he declared it was dissolved; and by virtue of the laws passed by the so-called confederate government at Montgomery, and which were passed in 1861, all debts to the Union people of the North were confiscated and wiped out; and that the location of said road being in his imagined confederacy, there would be no debts to pay to anybody, and he would have said road free from all debt to those whose borrowed capital created it, he having se-
20 cured all that was movable, and thus taken with him all that might, in the meanwhile, be appropriated by this defendant and others to whom it belonged, in part payment of their debts.

But the said rebellion having failed, the said French now seeks through the medium of this honorable court, by false and deceitful statements, to assert pretended rights which he deliberately abandoned in 1861, after committing the grossest frauds on this defendant and others. And defendant states that it is not true, as pretended by said French, "that he not being able to return, earned his living for himself and family by tilling the soil in the State of North Carolina," as deceitfully pretended in said bill, but on the contrary he sought the position of commissioner of patents to his so-called confederate government, and not being able to get this coveted position, tendered himself as patent-agent, and located in Richmond, with a sign up for that purpose, and that if he did till the soil, it was only when his patent-agency failed him and he could not get into office.

And the defendant states that the pretence in said bill of complaint, that said French ever expected *that* said road to pay its debts, is false.

That he never expected to pay anything to anybody, unless he did it by some scheme that robbed others.

That said French never in reality expected to build said road when he and his associates procured a charter for it; that he and they had not the capital with which to build it, and only secured said charter to speculate with or sell to others; that after he absconded in 1861, this defendant, as the administrator of one James McCullough, deceased, became possessed of an assignment in pledge of the naked franchise of said road, executed to said McCullough for money loaned, which has never been paid, a copy of which the defendant herewith exhibits as part of this answer, marked Exhibit H, No. 12.

And defendant repeats that said road, as constructed, wholly built with borrowed capital, and debts for money borrowed existed against it for a much larger amount than ever went into said road, and that the purchasing and holding of said judgment by this defendant "to abide the time of said company's being able to pay its debts," as pretended in said bill of complaint, is a mere assertion, falsehood, and fraud, on the part of the said French, whereby to harrass and injure this defendant.

And this defendant, further answering, states and charges that
21 the matters and things alleged in the said bill of complaint, and that the said bill on the face, do not exhibit any legal or equitable demand against this defendant, or any sufficient cause of action against him to entitle the said French to have or maintain this suit against this defendant. Wherefore, this defendant prays that this answer may be taken as a plea in abatement, and also as a demurrer to the complainant's bill, in the same manner and to the same effect as if the said complaint had been specially demurred to.

And this defendant, further answering, and by way of seeking affirmative reliefs, states and charges that, by virtue of said judgments owned by this defendant, and, by virtue of the purchase made by the defendant of the said road, and all its property and effects, at said business sale, on or about the 10th day of April, 1862, which included everything conveyed and covered by the deed of trust executed on the 16th of July, 1857, to said Walter Lenox, to secure said coupon bonds; that all the rolling-stock, engines, and cars were purchased by this defendant at said sale, and would have been delivered to this defendant but for the fraudulent acts of said French in removing and taking away the said rolling-stock, and selling the same for his own use in 1861, as aforesaid. And that defendant, as such purchaser, is entitled to recover from said French the value of said engines, cars, and movable property belonging to said road, and covered by said deed of trust, and

which defendant states and charges that at the time the same were taken away and appropriated by said French was worth the sum of twenty-five thousand ($25,000) dollars, which sum the said French should account for and pay to this defendant, with interest thereon, as damages from and after the date of sale and purchase aforesaid.

And this defendant, as further affirmative relief against said French, states and charges that the said French is personally liable and indebted to this defendant for the said sum of three thousand ($3,000) dollars, which this defendant placed in his hands in trust at his own request to purchase omnibusses and horses in the name of this defendant, and as his individual property, and to be used by the said company, but which the said French did not so use and apply, but on the contrary fraudulently appropriated the three thousand dollars to his own use, whereby he became indebted, and is indebted to this defendant, in the sum of three thousand ($3,000) dollars, with interest thereon, since the
22 month of January, 1861, or the date at which said money was so advanced to him as agent of this defendant, to be used for the purposes named.

And defendant prays that this answer may be taken as a cross-bill against said French, and that defendant may have an account taken before an auditor, and that he may have a decree for the value of said rolling-stock, to wit, the sum of twenty-five thousand ($25,000) dollars, with interest thereon, since the 10th day of April, 1862; and the further sum of three thousand ($3,000) dollars, with interest thereon, since January, 1861, in such manner and to the same effect as if this defendant had exhibited his original bill before this honorable court for relief in that behalf.

And this defendant, denying all frauds, and denying all pretended rights, claims, and demands of said complainant against this defendant as in said bill alleged or implied, and denying each and every allegation in said bill not otherwise specially answered, admitted, or denied, and, having fully answered, prays to be dismissed with his costs.

And defendant, upon his cross-bill against said French, prays that he be required to answer the same under and according to the rules of this honorable court, and that defendant may have a decree as hereinbefore prayed, and all general and special relief, and defendant will ever pray.

ALEXANDER HAY.

UNITED STATES,
*Eastern District of Penn.:*

On the 12th day of September, A. D. 1868, before the subscriber came Alexander Hay, the defendant in the foregoing answer mentioned, who, being duly sworn, says that so far as the statements therein are within his own knowledge, they are true; and so far as they are derived from information of others, he verily believes them to be true.

ALEXANDER HAY.

Sworn to and subscribed before me 12th Sept., 1868.
[SEAL.] W. GRIER HIBLER,
*U. S. Commissioner.*

23 DEFENDANT'S EXHIBIT H, No. 1.

ALEXANDRIA, VA., *Sept. 9th*, 1859.

*Alexandria and Washington R. R. Co. to T. W. Mason & Co.:*

Debt consists of six notes, endorsed by J. S. French, on which there are judgments against French and the R. R. Co.

| | |
|---|---|
| Debt, with interest and cost | $9,138 25 |
| Debt to Morris & Tanner, endorsed by J. S. French and Walter Lenox, on which there are judgments in Alexandria County against the R. R. Co. and French, and against Lenox in Washington, for about one-half the debt. | |
| Debt, interest, and cost | $3,627 12 |
| Debt due R. Archer & Co., endorsed by French and Lenox, by the R. R. Co.. On this no suits have been instituted. | |
| Debt and interest | $2,761 15 |
| Debt due by R. R. Co. to Frances L. Smith | 1,100 00 |
| | $16,526 52 |

The above several amounts have been assigned to you for value received, and the assignments on the judgments endorsed in the clerk's office. The assignments with the statements I have.

To settle these was more troublesome than I expected, and some of them cost more than I expected. However, there is a great deal achieved. Besides these claims there is also assigned you a debt due by the railroad company, and endorsed by myself and Lenox, for about $20,000, to Jos. R. Anderson. To get this latter in connection with the claims of Morris and Tanner and R. Archer & Co. interested with Anderson, I had to convey, in addition to what I had paid and the lands I had sold, another tract of about 140 acres, which I had not previously parted with. It is, however, a great deal achieved.

One of the judgments of T. W. Mason & Co., for about $1,400, had been docketed in Elizabeth City County, where this land lies, and there is a question whether it bound this land or not; if it did, then it still does so, and is assigned to you, and Anderson required a clear
24 title to it, so I enclose you a paper releasing it, which please copy and sign and let somebody witness, and return to me.

The fund is not entirely exhausted; there are still several smaller matters to settle, but those above named were all important to get hold of.

You will observe I am personally bound for all the above matters, which, in the event of accident, you must guard against. Now the turnpike and Washington matter are to manage.

Let me know how and where you are, and how long you will be in one place, and if not convenient for you, I will come on and see you. I hope you have recovered your health and are in good spirits.

Yours, truly,

JAMES S. FRENCH.

To A. HAY, Esq.

EXHIBIT H, No. 2.

This is written in haste, and not as fully and explicit as I would be had I more time.

JULY 2.

Received yours of yesterday just as I was leaving; had no time to get charter. As to the city debt, I wrote you the terms on which I think it can be had, and also what Lenox thought.

The purchase of the debt which I think can be made by giving satisfactory security to take up the guarantied bonds as they mature, or make the arrangement with the holders of the bonds. Riggs owns nearly all

of them, and this would relieve the city entirely. The debt now due is $48,000, payable in eight years—$6,000 per annum, and interest semi-annually. This would give you the absolute and whole control. The turnpike debt you can get on the terms I mention.

This would be free (no mortgage affects it) from any incumbrance whatever.. I had not time to look at the deed, but, I think, owning the city debt, you can sell out under the deed in thirty days; certainly not exceeding sixty days.

As before stated, you are the only person to whom I have stated these things.

You ask why you can't arrange with the city to use the new bonds?

25 1st reason. The lien the city now has is valid and sufficient to make good its debt. It cannot be made any better than it is. It is the first lien upon the road and all its property. There is, therefore, no inducement for the city to make the change.

2d. The bonds must be issued by the new company, and this would require the company first to own the road before they could convey it to secure the bonds. But, as the city debt can be arranged, payable in eight years, and the turnpike debt in six, twelve, and eighteen months, it would only be necessary to use so much of the bonds as would meet the accruing liabilities, and, if necessary, replace what is necessary to pay down. As before stated, the road can itself be made by this issue of bonds to pay every dollar it would cost.

Now, in saying the city of Washington will do this, and the Turnpike Co. this, &c., I have never mentioned the matter, but am confident from what I know. Again, to begin to negotiate with the new bonds, even if you could use them before buying the road, would be bad policy.

It would let the world see what you are doing, and create notoriety.

Do nothing of this kind, but quietly arrange the whole matter.

It will take a little time to arrange it. First, settle off the turnpike debt and the other small matters to be paid. I think the $5,000 will do it, or about this sum, and this includes payment in full for a lot about one hundred feet square, belonging to R. R. Now, as to time, most of these matters I could manage for you. All the purchases of debts and assignments to be made to you or to yourself, and such other person as you name. You could be present to settle or arrange the city debt and turnpike debt. Many little details must be left for conference.

This is beyond question; if you can accomplish what I suggest, we can make the road buy itself, and this without a dollar's outlay, except for so long as may be necessary to issue the bonds; and we can, if we choose, sell out within twelve months at a profit I am unwilling to name, so I think, if we should wish to do so.

EXHIBIT H, No. 3.—[*Confidential.*]

26 MY DEAR SIR: Enclosed in a separate package find Nos. 1, 2, 3, 4, and 5, with notes. The argument is retained for you. I think your affairs are brightening.

Now, as to the R. R., a matter whose importance I wish you could see as I do.

The opinions I expressed to you were all sustained in the conference I had called to pass judgment on them. The lien to the city of Washington is valid. The lien for the coupon bonds was obtained through fraud, because never paid for, and will be set aside—the judgments and other debts subject to prior liens. But to simplify this matter, and own the road without even running any risk, the following is suggested:

Purchase the lien of the city of Washington and pay off the turnpike debt to Fowle, then sell the road and become the purchaser, with a clear title and no incumbrances. At what this can be done for, it is the cheapest property in the country, and it can be done with very little money, and the road be made to pay the liabilities incur'ed, leaving no personal obligations whatever in this way.

The city of Washington is bound for the R. R. for $48,000, payable in eight years, at $6,000, and in't, per annum. I feel confident she can be made to give up this lien on the assumption of this debt. Lenox says he is confident it can be had for $30,000 cash.

The turnpike debt, about $16,000, I can settle at 6, 12, and 18 months. Now, if these debts can be satisfactorily secured, they can be had on the terms named, and thus the road owned without the payment of a dollar. If, however, the lien to Wash. can be bought for $30,000, the T. P. debt can be for $14 or $15,000 cash, making, say, $45,000 cash. Then I should want some $4 or 5,000 dollars to pay debts; say $50,000 would get the *the* railroad and turnpike with valid titles, which in a few years will be worth ten times the amount, and the mere franchise of which is now worth five or six times the amount, and, besides this, rolling-stock to the value of $25,000, in good order, and the road doing well. But how to do this without personal obligations? Relieve the personal obligations in this way: By special statute the company is authorized to issue $70,000 in coupon 7 per cent. bonds. As soon as the arrangements mentioned are completed, issue coupon bonds to the above amount; they would be founded on property which has cost about $150,000, the road now doing well, at a point whose value all admit, and sell or hy-
27 pothecate these bonds to replace the money paid or security given. No better bonds can be made, and thus the road can be made at once to pay for itself. There are minor details and some small matters, for which there is no room in a letter. This would relieve the company of a debt which there is no legal or moral obligation to pay, and the whole matter can be arranged satisfactorily to all other parties, and the new company own the R. R. and franchise, rolling-stock, $25,000, and 477 shares of turnpike stock out of 500, par value, $25,000, and a good paying stock, and the railroad, by the suggestion above, can be made to buy and pay for itself.

Let the coupon bonds run twenty years; the road would pay the interest and dividends besides.

I have never mentioned this matter to a single person but yourself. It is not everybody I would like to be associated with, and then this matter must be done by a third party; and besides, I would not like to have more than two besides myself.

I have spent a great deal of money and years of labor, and should like to save something. Cannot you and D., under this statement, accomplish the object? We can get the privilege of laying a track over the bridge next winter, and, if not, the road will pay operated as at present. Can't you, with the railroad and turnpike stock, raise the money so as not to interfere with other matters?

Think of this, and write me fully, because the matter occupies my entire thoughts. If you can do nothing I must, which I dislike doing, open these matters to some other person, which I wish to avoid.

I have written frankly, and wish you would return this letter, as it might fall into other hands if preserved, and I might not be understood. But this matter does seem so plain I hope you will see it as I do. Write me as soon as you can, and fully and frankly.

Besides the 70,000 in coupon bonds, the new co. would have 477 shares

of T. P. stock, $23,850, to relieve the personal obligations or raise money on to repay that advanced.

DEFENDANT'S EXHIBIT H, NO. 4.

MONDAY MORNING.

MY DEAR FRIEND: You have no enemy on whom you would inflict as much pain, as I trust only your inadvertance has inflicted on me
28 the past week. When we parted, I had no reason to doubt you would aid me in putting the road in operation, and otherwise assist me. Believing this, I wrote to New York for the superintendent, and have daily and hourly expected to hear from you in reference to the omnibusses, &c. The outlay could be secured even beyond preadventure. When we parted, an execution had been served on me against the road for about $1,000, which the judge decided to be prior to any mortgage. Under this, the road is to be sold in a very few weeks. If I had means to obtain injunctions, &c., I could prevent this, but I am entirely without, and this winds up the road matter. With the means to put the road in operation, this could be prevented. I have incurred much expenditure to protect your interest in the road. Now, it would be wise that you take mine on some terms, or let me take yours. Better this than certain loss. Again, you must pardon me for reminding you of what I trust you have not forgotten: For more than a year past I have devoted more than one-half of my entire time to your matters and . I have preferred you to myself, and labored night and day as I would not for myself. Your slightest wish has been attended to. I have never delayed a request one hour. I have written you on your own affairs, I'd suppose, at least 100 letters, laboring in every possible manner to promote your interests. I have, in addition to all this, incurred expenditure, comparatively small, it is true, and I have done more. And throughout this time I have felt that an implied promise on your part was more in my eyes than the bond of other people. I had a faith that never wavered for and instant. Yet ample success has crowned your efforts and , and for the sleepless nights and anxious watchings of more than a year, your friend does not even receive a promised letter, be the contents what they may. I can write no more. For the assistance necessary to save the road, and keep along, I think I can give satisfactory security. At all events, I should be graetful to be permitted to do so. If done at all, it must be done at once. By the memories of the past, I appeal to you to meet me at once and arrange in some way this matter. Now, if these lines appear impassioned, I sincerely trust you will bear in mind that I have been walking my room through the night, tortured with suspense, and that my difficulties mainly arise from seeking to carry out your wishes and protect your interest. Let me hear from you by return mail. There are reasons for my anxiety. I send a copy to New York.

29 DEFENDANT'S EXHIBIT H, NO. 5.

MY DEAR SIR: The stock of the turnpike, about which we have talked so much, is to be sold the 1st of November. I enclose you a letter, which I wish you to copy and send to Fowle, unless there be some objections to it, and to have a copy of the letter you send taken and preserved, to be used, if necessary, hereafter. I do not think it commits you in any way; but I shall probably wish to try and set aside the sale; and I wish to show that the occupation of the turnpike by the A. L. & Hampshire

R. R. C., without paying for it, and the matter being still in litigation, operated against the sale of the turnpike stock if it sells too low. I do not think there will be a bidder but Fowle, and he will buy it at a nominal price; at least this I expect. Knowing your troubles, I do not bother you about this matter. If he buys it, we can at any time get it, I think, by paying his debt. Now we could get it for less.

DEFENDANT'S EXHIBIT H, No. 6.

WM H. FOWLER, Esquire,
*Alexandria, Virginia:*

SIR: I have heard that nearly all the stock of the Washington and Alexandria Turnpike Company is advertised by you for sale at an early day.

I am also aware that the Alexandria, Loudon and Hampshire Railroad Company has occupied, without paying for it, a part of the turnpike road, which has given rise to much trouble and litigation. Will you please inform me what are the rights of the turnpike company in this matter, and on what terms the occupation of the turnpike road can be settled? I am indirectly interested in this matter, and should like to own the turnpike if its franchise and rights of property are unquestioned and settled, and free from litigation.

Yours, res.

DEFENDANT'S EXHIBIT H, No. 7.

APRIL 20.

Yours of yesterday just received. Can't you be more particular as to the back-pay matter? If nothing can be done, say so. If it can be done at any price, say so. If at all, it must be at once.

All men should now seek peace. To subjugate the South is impossible. It may cost the country millions of men, and nothing would be gained.

It is a good time to settle matters peacefully. All should try to do it before any encounter of arms.

The North does not know the South. Rest assured the South cannot be conquered. Better pause than attempt it.

Yours, truly.

DEFENDANT'S EXHIBIT H, No. 8.

ALEXANDRIA, *April* 27, '61.

DEAR CAPTAIN: I have prepared some assignments, which I enclose, and hope you will sign and acknowledge, and return to me at once. If things ever get quiet, I will try and make something out of them.

The broad-rail one I have had to raise the money, as it was necessary to employ an agent. This I will also do in the one now pending, and try and get it through. Please attend to this; they may hereafter be worth something to my family, and they will be greatly in want. The papers tell you what is going on, and more too. Everything is remarkably orderly with us, and very quiet. Virginia is preparing for defence, not aggression. I still trust the horrors of civil war may be averted. Better separate peaceably, and adjust all matters fairly, which the South is ready to do. Better do so now than when hundreds of thousands have been sacrificed, which will have to be done at last. Do write. My kindest wishes and sincerest regards attend you and yours ever.

EXHIBIT H, No. 9.

ALEXANDRIA, *May* 9, '61.

DEAR CAPTAIN: I wrote you some time since, enclosing you some assignments for you to sign. Please do so and return them to me. I want to try and introduce the R. R. and chair. I see they talk of laying street R. roads over Washington City by the Government. If so it will be under the control of the Sec. of War, and beyond all question the best yet known—cheapest and quickest laid, is the one referred to above. The rails can be rolled at once. I would attend to this. Associate with you some large iron-mill to furnish the iron if you can, and want help, I will send you a competent man. Please send the assignments. I want to see how the patent can be secured South.

31 Now why not write; the interchange of opinion would do much good, since the papers lie so egregiously.

The Herald, of N. Y., is filled with lies about this place, &c., &c., &c. He has in the last two papers published letters from localities here, dated here, which were written most probably in N. Y., as it is impossible that any person could commit such blunders. I have been looking to see you turn up as some great military chief in these stirring times, knowing you to be better qualified than many who are figuring in the papers.

But I trust yet your people will stop and think, merely enquire what you are going to war for, and then humanity and brotherhood and common sense may resume their reign. It is not to defend the capital. The South does not want it; all it asks is to be allowed to separate in peace, to be let alone, that we may manage our own affairs. If we cannot live together—and the threats of extermination, subjugation, &c., teeming in northern papers, show we cannot—is it not better to separate in peace? I am sure you must agree with me, as must all thinking men. I trust they will pause to do so, or at least to count the cost of the war they propose.

You know I have long and often complained to you of the injury done by sensation papers. They mislead. Let me correct the opinion they express, that we have division among us; with the exception of isolated examples, persons who have some special object to obtain from the Federal Government, we have no Union men. The crusade against us preached by the North, and set on foot by the North, has obliterated every thought of a reunion, and the whole South stand united as one man. To subjugate some 12,000,000 of people so united is, as I have before told you, an impossibility. Besides, the North are entirely mistaken as to our resources.

They are more than ample within ourselves; the confederate loan lately taken was taken at 5 per ct. premium on 6 per ct. bonds. The blockade injures you more than us; it keeps out a vast number of manufactures, wares, &c., which we were in the habit of purchasing, and which we can do without. It prevents our sending abroad provisions, cotton, tobacco, &c., &c., which we can retain for years if necessary, and still have all the comforts of life around us, and this though not an article from the North should ever enter our borders.

32 But Europe will require our cotton to prevent ruin and revolution there, so also our tobacco, from which France alone derives an annual revenue of some 30 or 40,000,000 dollars. But I have merely written thus frankly with a hope that you may try and make others think, and to show you that I still remember most kindly our

personal relations, and wish you and yours a more pleasant time than awaits me and mine.

Yours truly,

JAMES S. FRENCH.

DEFENDANT'S EXHIBIT H, No. 10.

ALEX'R'A, *May* 11, —.

MY DEAR CAPTAIN: Your favor from New York I have just received, and it gives me great pleasure, for with it springs up so many kind remembrances of former days, and written on one of H. H. D.'s bills, still adds to the pleasure in bringing before me another friend, with his trials, troubles, and indomitable energy. You both deserve a better fate than to be confined in the whirlwind of unbridled passion which seems to be sweeping over the North.

But first, a word to business, with the simple declaration that nothing which has yet occurred affects the mutual confidence between us, and I trust nothing will. As to the assignments, a chief motive was this: Our State will, as a matter of course, ratify the ordinance of secession, and all patent property held by southern citizens will certainly be protected; it would therefore be really better to make to me conveyances of the whole, that the whole may, for the present, stand in my name, your part to be reconveyed to you hereafter. Now I will make no sale or contract without consulting you, and protect your interest in all respects as fully as if you were present. But do as you think best.

At present, only citizens of the southern confederacy are permitted to apply for patents, by an act of the congress now in session; this privilege was extended to citizens of Virginia a few days since. I have written to Montgomery for all the information to be had in reference to the matter. The same assignments, only substituting the whole for the interest mentioned, which you can do, will answer if you think it best to make it so. I shall use every exertion to introduce them, to have them secured, and trust to make something out of them for us both.

33 Standing in my name they would still be valid in the U. S., and you could try and do something with them with you, which I would sanction, while they would also be valid in the South. But in your name, not a citizen of the South, they might not be recognized. I would attend to this at once.

Now, I wish circumstances had thrown you and Day with the South; it is destined to be a great field for enterprise, and prosperous in the extreme. But there is no time for this theme, for while I am writing so quietly, I am, as you know, close to a large hostile camp, and all business around me has been paralyzed, and the only preparation is that for war when it comes. Our State resounds from one end to the other with the tread of armed men, and the whole South is more a vast camp than the North even.

But with this vast difference, they are preparing for no war of aggression, but simply to defend their wives and children, their homes and firesides.

They are not inflamed with any feelings of hatred against the North, and are at a loss to understand the crusade which is preached in the North for subjugation, and extermination, and servile war, with all the horrors which the imagination can conceive. The time will come when the papers at the North will deny that they have advocated these atrocities, and posterity will doubt if such things were ever contemplated.

And what is it all for? Because fanatical abolitionists have kept up a constant warfare against the South, and with the aid of demagogues have sectionalized the country, until the South prefers to separate in peace, rather than remain in constant controversy. Is it not far better to do so than to devastate the country with civil war and then separate? Separation has been brought about by violations of the spirit of the Constitution on the part of the North, and is now inevitable. Subjugation is an impossibility. While I write the sound of cannon on the river, stopping every little craft that plies its waters, salute my ears. Armed steamers conveying excited multitudes to the camp at Washington, pass near our wharves, and confederate flags floating over the city enrage them, and with threats against us they pass on to glut their vengeance at a future time against persons who have never in any way interfered with them, and only ask to be let alone. "God bless the Union," my friend, is the motto on your letter. The present state of affairs brings to me as much sadness as to you; but it is a delusion to suppose
34 the Union exists; it does not; the fraternal feelings which created it and held it together have all been sundered, and the stars and stripes only represent the glories of the past, when a common brotherhood and common interest bound us together. No more at the roll-call of the States will they all answer to their names. Thirty-four stars may still emblason your flag, but many, like the vacant chairs at a table where death has entered a family, will only serve to remind of the lost, yet yield no response when called. Oh! how sad a theme!

But it is done, and all that is now left *is* for good men to do is to arrest, if possible, the horrors of war, not suffer the country to be plunged into war to support the Chicago platform and keep in power a few ambitious and reckless politicians.

Does it not occur to you that in the open violations of the Constitution being daily made you are preparing for a military despotism? After having gotten together an army of 2 or 300,000 men, subsisting on Federal support, with the vast number of employees and officials accompanying it, and possibly without the means to pay all its dues, think you you can disband them when you please? Increase the number, and think for yourself what is to be the issue. The northern papers are still calling for more men. Suppose you withdraw for several years from the business pursuits of life ½ million or more, can you safely disband them unpaid when you wish?

Suppose you subjugate the South, and exterminate its inhabitants, will this enable you to pay?

My friend, I take it for granted you have viewed these things as I do, still I cast these thoughts by the wayside for what they are worth.

With best wishes for you and yours,

JAMES S. FRENCH.

DEFENDANT'S EXHIBIT H, No. 11.

ALEXANDRIA, *May* 17, '61.

MY DEAR CAPTAIN: I received a brief note from you this morning in answer to two long letters. I wish you had written more, as it gives me so much pleasure to hear from you. For you and yours I have a heart full of kindness, nothing else. In the excitement which surrounds you you forgot the assignment for the patent for the railroad and the application for the pavement now pending.
35 This latter, unless placed in interference, should now be issued. Please say if you have received any notice. I propose to attend

personally to these things. There is a good chance to introduce the road, both in Petersburg and Richmond, and probably the pavement. I will incur all the expense in trying to do so, and give it my time. I will also have the matter in Washington attended to, if the patent has not issued, and pay the expense.

Please let me hear from you at once, as I want to go to Petersburg and Richmond.

About public matters I will no more write, only to say that all my exertions have been and are for a peaceful settlement.

And I still think if hostilities can be delayed until Congress meets the matter will be peacefully adjusted. I pray it may.

Yours, truly,

J. S. FRENCH.

DEFENDANT'S EXHIBIT H, No. 12.

Know all men by these presents that I, J. S. French, being indebted to James McCullough, of Washington City, in the sum of one hundred and twenty dollars, borrowed this day; in the sum of between six and seven hundred dollars, the exact amount not remembered, but will appear by a note held by said McCullough for the amount, which said sum was also loaned me, I think, less than two months since; and the said McCullough being also my endorser on a note for sixteen hundred dollars, due in Richmond about the 12th of June next, and desiring, in the event of accident, that these several sums shall be paid to the said McCullough, or so much of them as shall remain unpaid by me, I hereby, by these presents, constitute these debts a lien, and the first and only one I have given, on the charter I obtained from the legislature of Virginia to construct a railroad from Alexandria to Washington City, with all the privileges belonging to it, or which will attach to it from a bill I am now urging before the District Committee of Congress for the privilege of using the bridge now over the Potomac. This privilege and charter, with the right to use my patent, to be disposed of in the event I am unable to attend to it, by the said McCullough and my brother George, on the best terms they can, the
36 debts herein provided for to be paid, and the balance to enure to the benefit of my estate.

Given under my hand and seal this 20th day of May, 1854.

(Signed) JAMES S. FRENCH. [SEAL.]

N. B.—The words "and charter, with the right to use my patent," between the sixth and seventh line, were written before the signing of the above writing, and are intended by me to constitute a part of it.

(Signed) JAMES S. FRENCH.

*Subpœna to answer cross-bill.*

In the supreme court of the District of Columbia, Sept. 19, 1868.

JAMES S. FRENCH, COMPLAINANT,
*against*
ALEXANDER HAY, DEFENDANT. } No. 1337. Equity docket 9.

The President of the United States to James S. French, defendant:

You are hereby commanded to appear in this court, at its first special term occurring twenty days after the service of this subpœna,

and answer the exigency of the cross-bill, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise, the bill may be taken for confessed.

*Marshal's return on subpœna to answer cross bill.*

Not to be found.
(Signed) D. S. GOODING, *Marshal.*
OCT. 26, 1868.

37 *Replication to answer.—Filed Dec.* 1, 1868.

In the supreme court of the District of Columbia, in chancery.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY.

The replication of James S. French, complainant, to the answer of Alexander Hay, defendant.

This repliant, saving and reserving all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant, without this, that any other matter or thing whatever in the said answer contained material or effectual in law to be replied unto, confessed, and avoided, or traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JAMES S. FRENCH,
*Defendant.*

EUGENE CARUSI,
HUGHES, DENVER & PECK,
*Solicitors and Counsel for Complainant.*

38 In the supreme court of the District of Columbia, the 31 day of May, 1869.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY. No. 1337. Equity, docket 9.

The President of the United States to Francis L. Smith, jr., of Alexandria, Virginia, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with power and

authority to examine James S. French and Francis L. Smith, as a witnesses for the complainant in the above-entitled cause, upon the interrogatories annexed to this commission; and, therefore, you are hereby commanded, at a certain day and place, or certain days and places to be appointed by you, to cause said witness' to come before you, and then and there examine them, on oath or affirmation, upon the said interrogatories, and reduce their testimony into writing, to be signed by said witness'; and, having so done, annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness, D. K. Cartter, *Chief Justice.*

R. J. MEIGS, *Clerk.*

39 *Deposition of J. S. French.—Filed June 30, 1869.*

In the supreme court of the District of Columbia.

JAMES S. FRENCH } *vs.* ALEXANDER HAY. } In equity. No. 1337.

JAMES S. FRENCH, a witness of lawful age, being first duly sworn according to law, answers the interrogatories proposed as follows:

Question 1st. State what was the financial condition of the Alexandria and Washington Railroad when you commenced the negotiation with Alexander Hay, as stated in your bill.

Answer 1st. There were three deeds of trust on the road. The 1st to Jos. H. & A. Thomas Bradley, trustees, to secure the city of Washington the sum of $60,000 for guaranteeing the bonds of the A. & W. R. R. Co. On this debt the interest had several times been paid, as shown in the records of the suit of the A. & W. R. R. Co. vs. Fowle, Snowden & Co. The 2nd deed was to I. Louis Hinser & Co., to secure a debt of about $15,000 due Fowle, Snowden & Co. This debt was also secured by 477 shares of the Alexandria and Washington turnpike stock, par value $23,850, & $4,000 in individual notes deposited as collateral se-

40 curity. The 3rd deed was to Walter Lenox to secure $30,000 in coupon bonds of the company, which were sold to Joseph Thornton, attorney in fact of his brother, Benjamin Thornton, of England, for $10,000, only about $5,500 of which had been paid or could be collected. Besides these debts, there was a floating indebtedness of about $40,000, a small portion of which had been reduced to judgments.

Question 2nd. What amounts in money had you actually expended on the road up to this time?

Answer 2nd. I had expended on the road up to March 11th, 1858, the sum of $87,525.08, as appears from a statement made out at that time by James Douglas, then the book-keeper of the company and now in the employment of the O. & A. R. R. Co., which statement is confirmed by one of the books of the company now in my possession, but greatly mutilated. What amount was paid by me after that time I have no means of knowing.

Question 3rd. What became of the books and papers of the railroad company?

41 Answer 3rd. I left them in my dwelling-house in Alexandria in May, 1861, when I went after my wife & children, who were on

a visit to some relations in North Carolina. I was prevented from returning to Alexandria as I expected to do, and during my absence Alexander Hay wrongfully & illegally sold my house and delivered it with all its contents to Jos. B. Stewart, receiving no money for it & making no deed for it. My being dispossessed of it caused me to lose most of my papers and records; some, much mutilated, I recovered on my return home.

Ques. 4th. What induced you to seek to buy up the debts against the R. R. company?

Answer 4th. I had an unwavering confidence that the road would finally succeed and prove a good investment to whoever owned it. I was personally bound as endorser on most of the notes I had given for the company, and the continued opposition to the roads crossing the river at the site of the Long Bridge showed that the success of the enterprise would be delayed longer than I at first expected.
42 I saw the claims against the road could be bought at a very considerable discount; I therefore sought to interest some one with me who had means sufficient to buy up the claims against the road, who would hold them as a friend, and aid me in working through the enterprise, he receiving such an interest in the road as should compensate him for all the advances he should make in buying up the claims.

Question 5th. State what agreement you made with Alexander Hay and the date of it.

Answer 5th. There was no written agreement between us, but a verbal understanding or agreement that if he, Hay, would advance the necessary means to buy up the claims against the A. & W. R. R., that I would purchase them and assign them to him, to be held by him as security for all the advances made, and that on a settlement between us, I would assign him such a portion of my stock in the road as he would think satisfactory for the advances made, the road continuing responsible for the debts purchased. The exact date of the agree-
43 ment I do not remember, as both by letters and in conversations I was for some time trying to make it. It was partly executed by Hay in the summer of 1859.

Question 6th. State what amount Hay advanced you to buy up the claims against the railroad, and when.

Answer 6th. About $5,000 in August, 1859, as shewn by his letter dated August 22nd, 1859, enclosing the same, and a copy of which I herewith file as an exhibit, marked F, No. 1.

Question 7th. What disposition did you make of this amount?

Answer 7th. Soon after receiving the amount I purchased the claims against the Alexandria and Washington R. R., which are specifically set forth in my letter to Hay dated September 9th, 1859, which he in his answer makes his Exhibit H No. 1. The debts purchased amounted to $16,526.52, and were duly assigned to Hay. For these claims I paid for most of them twenty-five cents in the dollar, for some a little more, the whole amounting to $4,486.68, as evidenced by the records of
44 the clerk's office of Alexandria County, Va., a certified copy of which is herewith filed as an exhibit, marked F, No. 2. These were all the claims purchased at that time, leaving in my hands between 4 & 500 dollars of the amount advanced by Hay, which was subsequently also expended in the purchase of claims against the road.

Question 8th. In your letter to Hay of Sept'r 9th, 1859, made an exhibit in his answer, marked H, No. 1, you say there is also assigned you a debt due by the R. R. C., and endorsed by yourself and Lenox, for about $10,000 to Jo's R. Anderson, which debt does not appear among

the claims stated to have been purchased by you in said exhibit. Explain how this is.

Answer 8th. The debt here referred to, due Anderson, was for $16,607.87, payable 30 days after date, and dated April 4th, 1857. I was personally bound for it, and had contracted with Anderson to settle it by giving him for it certain lands which I had near Old Point Comfort, Virginia, some time before I made the agreement with Hay; and as I did not wish the debt to appear in my name, as belonging to me, I re-
45 quested Hay to let me have it assigned to him, and that he could re-assign it to me, which he did May 23rd, 1859. (See certified copy of assignment herewith made an exhibit, marked F, No. 3.) This debt was due for two locomotive-engines, built at the Tredega' Iron-Works, in which Morris & Tanner & R. Archer & Co. were interested, and in order to settle their debts at the price shewn in Exhibit No. 2, besides the amounts paid them, I had likewise to convey another tract of land which I had, and thus I settled all of the debts. When I had the deed prepared for the lands, a question was raised by Anderson's counsel as to whether or no one of the judgments of T. W. Wason & Co. for about $1,500, which I had assigned to Hay and for which I was bound, did not also bind these lands. Hence my request to Hay, in his Exhibit H, No. 1, that he would send me a release of all responsibility for this debt, which he did, a certified of which is herewith made an exhibit, marked F, No. 4; also a release of all liability on the other claims, which he also sent, a certified copy of which is here made an exhibit, marked F, No. 5. And at the same time Hay also reas-
46 signed me the note of the R. R. Co., due Anderson, which I had requested Anderson to assign him, and Hay had the assignment duly authenticated before a notary public, a certified copy of which assignment, with a general release, is herewith made an exhibit, F, No. 6, showing that Hay had no interest whatever in this debt, and that the debt to Anderson formed no part of the claims purchased in Hay's Exhibit H, No. 1.

Question 9th. What do you mean by saying, in said exhibit, "The fund is not entirely exhausted;" also, that a great deal has been achieved?

Answer 9th. I meant of the $5,000 advanced I had only expended $4,486.68, as shewn in my Exhibit No. 2, and still had a balance of between 4 & 500 doll's on hand; also, that a great deal had been done towards consolidating the debts of the R. R. Co., for I had purchased Anderson's large debt, and had purchased for him the debts specified in his Exhibit H, No. 1, leaving *the* debts which could give any trou-
ble, but Fowle & Snowden's debt, secured by the turnpike stock,
47 and the Washington City debt, which when settled would have consolidated the debts as agreed.

Question 10th. State why you left Alexandria in the spring of 1861, and whether or no you intended to return, with the circumstances attending your leaving.

Answer 10th. When the war commenced, in 1861, my wife and children had gone some time before on a visit to some relations in North Carolina. I was in Alexandria, attending to my business matters, and when the city was occupied by the U. S. troops I left, for the purpose of joining my family, expecting soon to return. I left my house completely furnished; also the provisions there on hand, a good supply of preserves and pickles put up by my wife, my private papers, a good library, the wearing apparel of myself & family, except such as they had with them. I took no baggage with me, locked up most of the rooms, & placed the

house in care of E. S. Boynton, superintendent of my R. R., telling him I was going after my family, & expected to be back in a few weeks. As corroborating this statement, I refer to the deposition of E. S. Boynton, taken, without any reference to this matter, by the defendants,
48 Hay, Stewart, &c., in the suit of the A. & W. R. R. Co. vs. W. A. & G. R. R. Co., pages 990 & 991, printed record of the case now pending in the supreme court of appeals of V'a.

Question 11th. Hay charges in his answer that soon after he became acquainted with you, you commenced a system of borrowing and drawing money from him, all to be applied to the building of the railroad, and at some future time to be paid back out of the stock, which was never done. Explain the facts connected with this charge.

Answer 11th. I knew Hay as an acquaintance for several years before we had any business relations. I often met him when I was before Congress seeking to obtain the privilege of bridging the Potomac, but there was then no intimacy between us. I never borrowed a dollar of him for the purpose stated, nor ever made any such promise as stated. Our acquaintance for a long time was a mere common or passing one.

Question 12th. Did you or not tell Hay you had it all arranged to secure a charter from Congress to use the bridge across the Po-
49 tomac River, and pass through the District of Columbia?

Answer 12th. I never did. It was what I was constantly seeking to accomplish, and greatly desired and hoped to obtain; more than this I did not tell him.

Question 13th. Did you or not make to Hay any representations as to *to* the condition of the road that could mislead him, and had he any opportunity to examine it for himself?

Answer 13th. None whatever. Before I made the agreement with Hay for buying up the claims against the road, he and I had become intimate friends. He was frequently a visitor at my house in Alexandria, in going and returning always passing over the road, and could as well judge of its value and condition as I could. I made him fully acquainted with everything connected with the road. Of its value and ultimate success I was as well convinced then as I am now, and so at all times represented or expressed myself.

Question 14th. What debts of the R. R. Co. did Hay agree to purchase?

50 Answer 14th. Our agreement was that Hay should purchase all the outstanding debts of the company so as to consolidate them, especially the Washington City debt, because it was the first lien on the road, & Fowle's debt, because it was secured by collaterals which I wished released.

Question 15th. Hay charges in his answer that in 1859 "he advanced the money to purchase the judgments set forth in your Exhibit A and some others which were never assigned to him, especially the large debt of $20,000 in favor of Jos. R. Anderson." What are the facts in reference to this charge?

Answer 15th. Every debt mentioned in my Exhibit A was assigned to Hay; also the large debt of $20,000 in favor of Anderson, as shewn by the records, which debt Hay assigned to me long before he made the agreement with me, & long before he vacated the agreement which he did make, (see my Exhibits Nos. 3 & 6,) thus showing he had no interest in said debt. Every judgment against the R. R. Co. was purchased and embraced in the statement sent Hay Sept'r 9th, 1859, (Ex. H, No.
51 1,) except a judgment in favor of Henry Studds for $1,000, on which there was a credit for $250; after paying this credit, I

overpaid Studds for work done on the road more than the amount due on the judgment, expecting him to credit the judgment with it, but he had assigned it away, and I instituted a suit against him to recover the amount, which is still pending.

Question 16th. Did you or not refuse to tell Hay the amount expended by you in the purchase of the claims mentioned in your letter to him of Sept. 9th, 1859?

Answer 16th. I never did. Why I did not state it in my letter to him Sept. 9th, 1859. I can't say, unless I expected soon to see him, but am certain I told him when I saw him. The price paid was a matter of *of* record, & was filed in the clerk's office with the papers in each case, (see my Exhibit No. 2.) The price paid, as shown in said exhibit, was $4,486.37.

Question 17th. Did you or not, after the purchase of these claims, urge Hay to settle the debt due the city of Washington and the turnpike debt, or the debt due Fowle & Snowden?

52 Answer 17th. I did in every way I could. It was the very gist of our agreement, for the ownership of these debts by a friend who could hold them would have relieved me from all anxiety in reference to the road, and would have released my collaterals held by Fowle & Snowden.

Question 18th. Did he or not refuse to arrange them?

Answer 18th. He did not, but delayed doing so, while I confidently expected him to arrange them. About the last of October, 1859, the turnpike stock which was deposited with Fowle and Snowden as collateral security for their debt was advertised by them for sale. I urged Hay very earnestly to settle this debt & release the turnpike stock, as I feared it would be sold at a sacrifice, and which he ought to have done. He failed to do so, and the stock was sacrificed, netting after the payment of expenses and commissions only $6,183.00, which was credited on Fowle's debt.

Question 19th. Besides this amount paid Fowle & Snowden, did you or not pay off any other debts against the company?

53 Answer 19th. Besides the $6,183.00 credited on Fowle & Snowden's debt, paid from the sale of the turnpike stock, I also paid on said note, January 30th, 1860, $1,900, & on the 2nd of June, 1860, $265.14, making $8,348.14, as shown by the report of the commissioner in the case of the A. & W. R. R. Co. vs. W. A. &. G. R. R. Co., in the circuit court of Alexandria County, Va., printed record, page 751. I also paid John Bond, a creditor of the road, in April, 1860, $425, (see exhibits in record above referred to, page 21–3, & 21–4.) I also paid Prindle Froebel, creditors of the R. R., the former $5,300 with interest from Nov'r, 1857; & the latter 475 dollars with interest from same date, (see commissioner's report before referred to, page 757.) These are the only debts I can now specify. I used in the settlement of Bond's claim, $425; this amount I had of Hays. Froebel and Prindle's debts I settled with my own means. None of these debts I assigned to Hay, but held them to be adjusted between us under our agreement.

Question 20th. Hay says in his answer that when he ceased to advance money you exhibited great dissatisfaction, and made threatening complaints; why was this?

54 Answer 20th. I made no threatening complaints, but I was very much dissatisfied at his not carrying out his agreement. He had failed to pay Fowle & Snowden's debt & release the collaterals, which he should have done and taken our assignment of the debt to himself; he had failed to make any arrangement in reference to the Washington

City debt, nor had he made any effort to do so. And the judgment assigned away by Studds had been decreed to be valid in the hands of the assignee against the R. R., and I was required to pay it, and an execution might issue and the cars or engine be sacrificed to pay it; hence I was very urgent that Hay should aid as agreed, or vacate his agreement & leave me to do the best I could.

Ques. 21st. What was the result of your appeals?

Answer. 21st. He declined buying me out, but sold me the claims I had purchased & assigned to him for about the sum he had advanced, $5,000, with interest from date, giving me my own time to pay it & leaving me free to do whatever I thought proper, as shown in my Exhibits B & C.

55 Ques. 22nd. When were you to pay the $5,000 specified in the assignment?

Answer 22nd. No time was specified. I was to pay it when I could make it out of the road. Hay had been unable to carry out his agreement & left me free to manage the road as best I could, and the debt was made to carry interest from date for that reason.

Question 23rd. Why did Hay abandon his agreement with you? State if you know the reason which induced him to do so.

Answer 23rd. I think it was because he had become very much involved in litigation after his agreement with me, which he feared would turn out disastrously to him. Feb. 29th, 1860, in a letter to me, a copy of which is here made an exhibit, marked F, No. 7, he expresses his uneasiness. Another reason was, I do not think he could have then commanded with any convenience so large a sum as was necessary to settle the Washington City debt, and besides he appeared to have lost interest in the road, being engaged in more exciting schemes.

56 Question 24th. Did or did not Hay after his re-assignment to you of the claims assigned to him ever require payment of the $5,000 mentioned in his assignment?

Answer 24th. I am positive he never did at any time, or in any manner, require me to settle it. It was a matter left to myself, Hay giving me time to make it out of the road. The $5,000, the sum I agreed to pay, bore interest from date, and no date was specified for its payment.

Question 25th. Hay says in his answer that, moved by your appeals and assurances, he advanced you $3,000 to buy omnibusses. Did he or not advance this sum?

Answer 25th. He did not.

Question 26th. Hay charges in his answer that about the month of October, 1860, you wrote him a letter, without name or date, about the turnpike stock; if you wrote to him at all on the subject, state the reason, and date of said letter.

Answer 26th. The letter referred to was written by me in November, 1859, asking him why he had not purchased the turnpike stock

57 which Fowle had sold. This I expected Hay, under his agreement, to do, and was greatly disappointed that he did not, until I found out he was much embarrassed in his own matters. This letter was written in Nov'r, 1859, when I expected Hay to carry out his agreement, and not, as stated by Hay, in October, 1860, when he had no interest in the road, having previously assigned me all his claims. I hereby corroborate my statement by Hay's answer to the letter to which he refers, dated November 4th, 1859, a copy of which is herewith made an exhibit, marked F, No. 8.

Question 27th. Did Hay or not by any act or deed ever manifest any want of confidence in you after the vacation of his agreement with you

up to the time of your leaving Alexandria, or did you or not still have business relations with him?

Answer 27th. He did not that ever I heard of; we were as warm personal friends after the vacation of the agreement between us as before, and continued to have business relations up to the time I left Alexandria. I regarded Hay as my personal friend while I was absent, and knew no better until my return to Alexandria after the war was
58 over. Hay assigned me all the claims he held against the road August 24th, 1860; and as corroborative of my statement as to our personal & business relations, I herewith file copies of several of Hay's letters written to me after that date, the 1st & 2nd written within a week after his assignment to me, asking my advice and attention to his own matters; the 3rd, written November 2nd, 1860, about his own affairs and friendly as ever; the 4th, dated March 9th, was written in 1861, is very kind and confiding, says he keeps an account of our matters in bank, (of which I have never heard a word;) 5th, a deed of assignment to me dated March 4th, 1861. These letters from Hay all shewing the kindest relations to subsist between us, copies of which are herewith filed as exhibits, marked F, No. 10, 11, 12, 13, & 14, the originals of all which letters and papers will be produced if required.

Question 28th. Hay charges that you removed the rolling-stock of the road in order to defraud him, and sold it to the confederate government. What are the facts in this respect?

Answer 28th. It is not true either in whole or in part; I re-
59 moved the rolling-stock, consisting of two small engines, 4 light city R. R. cars, & 2 small 4-wheel baggage-cars, from Alexandria, some short distance out on the Orange & Alexandria R. R., thinking they would be safer there than standing in the streets of Alexandria. I neither sold them, nor hired them to, nor were they used by, the confederate government. There being no room for the engines or cars to remain on any of the switches or turnouts, they were pushed off from the road & remained exposed to the weather until the following fall, being too light for use. The engines were stripped of all their movable parts, by persons unknown, and the cars were used for any required purpose. After this I got possession of the engines and a part of the cars; they were greatly damaged, & having no place to shelter them, or protect them from trespassers, to prevent a total loss I sold them, & held myself every ready to account for them.

Ques. 29. Hay charges that as soon as there was a court he took steps to have the road sold under some one of the judgements. What are the facts in this connection, so far as you know?

60 Answer 29. Hay had no claim whatever to any of the judgements, and if he had there were three deeds of trust ahead of them, and the road could not have been sold under them. But they employed Joseph B. Stewart as his attorney, who gathered up the old iron which was removed from the road by the U. S. Government, which took possession of it & relaid it; and although the iron was covered by the three deeds of trust before mentioned, Stewart, as Hay's agent, sold it, and received for it about $12,000, not a dollar of which has ever been accounted for. In proof of this sale and appropriation of the iron by Jos. B. Stewart, Hay's agent, I file herewith a copy of the deposition of O. A. Stevens, taken in the case of The A. & W. R. R. Co. vs. The W. A. & G. R. R., & others marked F, Exhibit No. 15.

Ques. 30. Hay states in his answer that he never collected or received one dollar, or the fraction of a dollar, on said judgments, or either of them, or derived any benefit whatever from them. State what you know on this subject.

Ans. 30. As a part of my answer to this question, I will let Hay speak for himself. In a suit brought by The Alexandria and Washington Railroad Company vs. The Washington, Alexandria and
61 Georgetown Railroad Company, and Alexander Hay, Joseph B. Stewart and others, in the circuit court of Alexandria County, Virginia, on the 26th day of May, 1866, the said Hay filed his answer, duly sworn to, from which I take the following extract:

"This defendant had paid and was the assignee of the following judgments, viz: First, T. W. Wason & Co., for $8,586.21; second, T. W. Wason & Co., for $1,604.42; third, Alexander Hay, $3,066.40; fourth, Alexander Hay, $21,297.81; fifth. Alexander Hay, $1,148.58; sixth, Morris, Tanner & Co., $3,246.63; seventh, Morris, Tanner & Co., $590.85; thus making a sum total of near $40,000 of debt held by this defendant against said company."

In the same answer Hay also states, "that as soon as he could get across to Alexandria, after the 20th of May, 1861, he caused his attorney, Joseph B. Stewart, to visit Alexandria and look after said road."

In the same answer Hay says: "After taking advice of counsel, he took possession of said road early in June, 1861, with a view of preserving and protecting the property, and, if possible, securing the money he had invested in said company."

In the same answer Hay says he "was also advised that he had a right to sell the road under execution, subject, of course, to the prior liens, and to purchase the same, which he had resolved to do, and requested his counsel to take steps to that end."

Hay, claiming to own these judgments, entered into an illegal and fraudulent combination with Joseph B. Stewart and others, and caused the road to be sold, he (Hay) buying it for $12,500. He then organized the Washington, Alexandria and Georgetown Railroad Company, and divided out the stock, and sold his proportion of the stock, as I have been often told, and believe to be true, for between $70,000 and $80,000, and then retired from the concern.

Hay says, in his answer before quoted from, that having organized the new company, he "found such an appreciation of said road as to be able to sell his stock in the same at such a price as would reimburse him for all the money he had put in said company, and that as soon as
62 he was able to get wholly released from said road without loss, he sold out his over two years ago, and has now no interest whatever in said company, either as a stockholder or otherwise."

In further proof that Hay collected all these claims, which are my property, I herewith file as an exhibit, marked F, No. 16, a certified copy of an affidavit sworn to by Alexander Hay, on the 22d of February, 1867, and filed in the United States district court of Virginia. In this affidavit Hay swears that he "was only paid said judgments by the Washington, Alexandria and Georgetown Railroad Company, which was organized after the trustees' sale on the 10th of April, 1862, and to which company the said judgments, each and all of them, belong."

And in further confirmation that Hay collected these judgments, reference is here made to Exhibit A, filed with my original bill, and containing a list of these judgments, most of which are marked "satisfied by order of Alexander Hay."

And, still further, Hays says, in his answer, that he took possession of the road early in June, 1861, with a view of preserving and protecting the property, and employed as his counsel Joseph B. Stewart, to visit Alexandria and look after the road. Joseph B. Stewart was also, by a regular power of attorney from Hay, constituted his agent

to collect and settle these judgments claimed by Hay; and the said Stewart, acting under the authority of the said Hay, did seize upon the iron rails which were removed from the road by the U. S. Government in relaying the road, and sold the same for 11 or 12,000 dollars, which has not been accounted for. (See the deposition of Oscar A. Stevens, taken in the case of The A. & W. R. R. Co. vs. W., A. &. G. R. R. Co. and others, in the circuit court of Alexandria County, Va., heretofore made an exhibit, marked F, No. 15)

And in further disproval of the statement made by the said Hay that he never collected a dollar of said judgments, or derived any personal benefit from them, and to show, on the contrary, that he did claim them, and made his claims chiefly instrumental in his getting possession of the road, and did derive great benefit from getting possession of the road, reference is here made to the answer of the said Joseph B. Stewart, the attorney of Hay, filed in the same case above referred to, in which the answer of Hay is filed.

63 Stewart says in his answer, section 7, that he was looking to the end of getting at the franchise and control of said road.

In section 8, he says that matters were being considered to the end of taking legal possession of the franchises of the road.

In section 11, Stewart says he advised Hay to act promptly, lest the road should be confiscated by the United States; and in the same section, also, says it was intended to sell the road under some one or more of the judgments and executions, as soon as a civil court should be established in Alexandria County.

In section 12, Stewart states that during the summer of 1861 Hay devoted his whole time to looking after and laboring to preserve said road, and to preserve from total loss, his lien upon it.

In section 21, Stewart states that Hay was compelled to purchase said road in self-defence, as the only means to ever get any portion of the money due him as a judgment creditor.

In section 22 he says that Hay purchased the road, and that he conveyed it, at Hay's request, to Hay and Joseph Thornton, who organized a new company, which they called the Washington, Alexandria and Georgetown Railroad Company.

In section 24, Stewart says: "And there is now not a debt of the old company of any species that the present company has not paid or provided for."

Besides this answer of Joseph B. Stewart referred to above, the said Stewart became a voluntary witness, and gave his deposition in the same case in which he filed his answer. In his deposition sworn to February 23, 1867, Stewart says Hay consulted him professionally as to his debts against the Alexandria and Washington Railroad, and as to the means by which he would, if ever, get his pay. (Page 952, marginal paging of printed record of case.) Page 953, Stewart says: "I advised Mr. Hay to take and declare formal possession of the road as a creditor, and having a vested right therein, and so to notify all trespassers." "During the remainder of the year, until towards December, this course was pursued."

From page 955 of the record of the case referred to, the following striking extract from the deposition of said Joseph B. Stewart is taken:

64 "Towards the latter part of the year it was determined to sell the road under some one or more of the judgments, so soon as there should be a court in Alexandria County authorized to issue process for such purpose. The necessity of such a course was daily

growing more imminent because of the policy then being inaugurated of mutual confiscation and seizure of all property for such purposes, growing out of the existing state of war between the United States Government and the Southern States, which was then about being put in active operation about the locality of this road, and the road itself threatened with seizure for such purpose, and which would have been the case but for the personal interposition of Alexander Hay in holding and claiming for himself and other creditors not engaged in the rebellion, that they had paramount rights to said road."

On page 965 Stewart says Hay became the purchaser of the road at $12,500. And in order to show that this sale of the road was a mere fraud, effected by a combination between Hay and Stewart, and others, Hay claiming to act by virtue of the judgments claimed by him against the road, reference is made to the deposition of said Jos. B. Stewart, page 970, where he shows that not a dollar arising from the sale of the road was applied to the payment of the bonds to pay which the road was sold, but that something over $2,000 was appropriated towards organizing the Washington, Alexandria and Georgetown Railroad Company; and on page 973, Stewart, in his deposition, says, when speaking of how the Washington, Alexandria and Georgetown Railroad Company was organized, that all the judgments of record were treated at their par value, with interest, as entering into the cost of the stock of the road, as in the organization of the company it was understood and agreed that said judgments were to be deemed as a charge and credit to the parties, and thereby extinguished, which was a conventional arrangement between Alexander Hay and Joseph Thornton in the organization of the new company.

On page 982, Stewart says: "The sale was absolute, but purchased with a view, by Mr. Hay, of realizing not only what he paid at the sale, but if possible the judgments he held against it."

65 And apart from this evidence furnished by Joseph B. Stewart in his answer and deposition, that the said Hay did appropriate these judgments to himself, and did derive full value for them, reference is here made to the affidavit of the said Stewart, filed and sworn to February 21, 1867, in the case of Horatio R. Riddle and others vs. James S. French and others, in the U. S. circuit court for Va., in which he says he was a director of the W., A. & G. R. R. Co., and actively engaged in its management, and "that all the judgments against the Alexandria & Washington Company, as appears by the clerk's certificate hereto annexed, have been paid; that deponent is unable to specify that every dollar, principal and interest, of the same has been paid, at this distance of time, but he is positive that they have been substantially paid by the said Washington, Alexandria & Georgetown Railroad Company;" a certified copy of which affidavit is herewith filed as an exhibit, and marked F, No. 17.

In still further disproof of the statement made by Hay, that he never derived any benefit from these judgments, and to show that they were collected by him, and that he did receive their full value, reference is here made to the answer of R. W. Latham, receiver of the W., A. & G. R. R. Co., which answer was duly sworn to, May 11, 1866, and filed with the answers of Hay and Stewart. Latham says, (sec. 11 of his answer:) "Nearly all the judgments, amounting to some $40,000, were owned by Alexander Hay, esq., of Philadelphia, who paid for and had assigned such as were not rendered in his own name."

In section 20 he says: "After the sale and conveyance before stated, this company (Washington, Alexandria and Georgetown Railroad Com-

pany) paid and discharged all the judgments against said original company (Alexandria and Washington Railroad Company) created before its dissolution as aforesaid."

And in section 31 of his answer, Latham says, "that the judgments paid and reimbursed to said Hay, with interest and charges, amounted to $48,000."

And in further proof that the said Alexander Hay did realize and receive the full value of the judgments aforesaid, reference is here made to the answers of Charles M. Coleman, Robert Mickle, cashier of the National Union Bank of Baltimore, Allen Chapman and Horatio R. Riddle, and William F. Snow, cashier of the National Exchange
66 Bank of Baltimore, duly sworn to on the 21st day of May, 1868, and filed in the same case with the answers of Hay, Joseph B. Stewart, and R. W. Latham. These parties say "nearly all the judgments, amounting to some $40,000, were owned by Alexander Hay, esq., of Philadelphia, who paid for and had assigned to him such as were not rendered in his name."

And in the same answer they say that the Washington, Alexandria and Georgetown Railroad "paid and reimbursed to said Hay the judgments, amounting, with interest and charges, to $48,000."

And this same statement is made in a bill filed by Horatio R. Riddle and others, and sworn to, praying for an injunction against James S. French and others, the said bill being filed in the United States district court for Virginia, and being the same case in which Hay and Stewart filed their affidavits.

From the recorded testimony of Hay himself, and the parties interested with him, whom I have referred to, their testimony being voluntarily given, there can be no doubt but that Hay received full value for the judgments.

67 Ques. 31. Hay charges, in his answer, that you were preparing for some time to leave Alexandria, with a view to defraud *to defraud* him, by removing the rolling-stock of your road, and not, as you allege, to go after your family. State what claims Hay had to it, if any, and what circumstances you can confirming your statement.

Answer to ques. 31. I have already substantially answered this question in my answer to question 28. There is not a word of truth in his charge. That I left Alexandria, expecting soon to return, is proved by the deposition of E. S. Boynton, before referred to. I left my house furnished, & with all its contents, my books, papers, provisions on hand, & the clothes of myself & family, which I would not have done unless I had expected to return.

Ques. 32. Hay charges that you applied for the office of commissioner of patents under the confederate government. Say whether or not it be true, and whether or not you ever held any office under the confederate government.

Ans. 32. I never did, nor did I ever hold any office under the confederate government.

Ques. 33. Hay charges that, by virtue of his purchase of the road under the sale made by J. B. Stewart, he became entitled to the
68 rolling-stock, worth $25,000, and prays for a decree against you for that amount for having removed it. What claim has he in this particular?

Answer to ques. No. 33. None whatever. The sale was conceived and consummated in fraud by Hay & Stewart, the principal parties to it, and has been decreed to be null and void, and ordered to be set aside by a court of competent jurisdiction.

Ques. 34. Examine the several exhibits accompanying Hay's answer, from No. 1 to 12, inclusive. Say whether or no they were written by you. If so, at what time? & explain separately the object, intent, and meaning of each one, with such evidence as you can adduce.

Ans. to 34. I have examined the exhibits accompanying Hay's answer. As they are copies, and I have not seen the originals, I cannot say positively they were written by me, but suppose they were, and proceed to give, as far as I can, my recollection of each.

Exhibit No. 1 contains a statement of the claims purchased by me, with the amount advanced by Hay, $5,000. The claims purchased amounted to $16,526.52, for which I paid, as will be seen by reference to my Exhibit No. 2, $4,486.68.

69 The claims were all assigned to Hay, and why I did not state what I paid for them I do not remember. The receipts were filed in the clerk's office, as shown in No. 2. I have no doubt I told Hay the amount I had expended the first time I saw him. The answers already given to the 7th, 8th, & 9th questions, explain this exhibit. I had purchased the debts set forth in Hay's Exhibit No. 1. I had also purchased myself the Anderson debt, and if Hay had settled the Washington City debt, & turnpike debt, (Fowle's debt,) which under his agreement he was bound to do, he would then have controlled the indebtedness of the R. R. company. My allusion to these debts in his Exhibit No. 1, was on account of my anxiety that he should settle them as soon as he could.

Exhibit No. 2.—This letter was written by me July 2nd, 1859, before I had made any agreement with Hay, and while I was trying to induce him to make the agreement which he subsequently did make. We were, when this letter was written, discussing the matter how the debts could be arranged, & how much it would take. I was showing

70 him how the Washington City debt could be settled without money. He wanted to do this by organizing a new company & using the bonds of the said company in settlement. I showed such an arrangement would be no inducement whatever to the city of Washington to make such a compromise. I urged his settling the turnpike debt which I had secured with collaterals. This debt was about $15,000. I tell him besides this debt & the Washington debt, about $5,000 would pay off the other matters necessary to be paid. I say nothing about the Anderson debt, because I owned it, and that owning the Washington debt & the turnpike debt he would control the road. Hay can fix the date of this letter; the date was stamped on the envelope. It was my views presented in letters & personal conferences which induced him to make the agreement with me to purchase the claim against the road. Hay entered into the agreement with me and advanced about $5,000, the sum I thought necessary, Aug. 22d, 1859. My letter to him of September 9th, 1859, his Ex. No. 1, confirms this, and this Exhibit No. 2 explains what I meant where I say in his first exhibit "Now the turn-

71 pike & Washington matters are to manage." This letter was a confidential statement to Hay of a business matter, for him to think of & judge of, and if it had been carried out by him would have been very profitable to him. It is an exhibit made by Hay himself, showing that I stated before any agreement was made between us, that about $5,000 would be required in order to control the indebtedness of the company, besides the amount necessary to settle the turnpike & Washington debts. When he entered into the agreement, he advanced the $5,000 towards carrying out the agreement, but no more. The reason why this exhibit of Hay's was not signed by me, and the

place of my residence not marked on it, was, I suppose, from our writing so constantly, or it may have been sent with other matters by express, as there was almost a daily correspondence between us, and frequently accompanying express matter; if sent by mail the envelope gave him the date & where mailed.

EXHIBIT No. 3.—I was exceedingly intimate with Hay and did a vast deal of labor for him. He himself shows this in his Exhibit No. 3, which otherwise I should be unable to show. What was the enclosure
72 in a separate package with notes Nos. 1, 2, 3, 4, & 5, while the argument was retained for him, I do not remember; they were about his own affairs, & I thought they were brightening. They were in all probability sent by express, as were many things between us. Hay was engaged in constant litigation about patent matters. Scarcely a case in which the papers or record was not sent to me by express or mail for my examination, and the preparation of such papers as I thought necessary for his defence or the prosecution of his rights. He had many counsel, & yet scarcely a case that I did not examine for him, & do what I could to advance his interests. He always desired it, and I did so, and he used as he pleased the suggestions made. As to the date of this letter, it was evidently written before Hay's Exhibit No. 2, and written to induce Hay to make the agreement which he subsequently did make. It was sent by express most probably with the package and notes referred to. The entire contents of it shew it must have preceded the agreement made with me by Hay, and was written, as was No. 2, to set forth the advantages & inducements there were for making the contract, asking him to reflect upon the views pre-
73 sented & regard the matter as confidential. I cannot doubt but that Hay had the means of proving the date of this letter. In all of these exhibits where the date is not stated there seems to be a purpose to misrepresent. The date of this exhibit was prior to any agreement between us. The object, and intent, and arguments used were to satisfy Hay that the contract I wished him to make was a most advantageous one. I ask him to act promptly, so that if he declines I may open the matter to other parties.

EXHIBIT No. 4.—This letter was written long after my agreement with Hay, and when I had become very much dissatisfied that he did not carry out his agreement. I had settled all the debts I could at that time; had settled the Anderson debt, about $20,000; had paid on Fowle's debt $8,348.14; had settled Prindle's & Froebel's debts some 6 or 7,000 doll's, besides other matters, while Hay had done nothing since he advanced the $5,000. It was therefore necessary he should either comply with his agreement or vacate it. Hence in this letter I propose to him either that he should buy my interest or sell me his. This
74 letter, his own exhibit, shows that for more than a year I had devoted more than half my time to his own matters; had written him more than 100 letters about his own affairs, and while I was taking all this trouble for him he seemed indifferent to his contract with me. He had gotten out of his troubles and been very successful. Hence I wrote earnestly to make Hay either execute his agreement or vacate it, so that I could be free to try and contract to get help from other parties, for he had done nothing towards settling the Washington debt, or the balance due on Fowle's debt, and yet I was constantly expecting and hoping he would do so.

EXHIBITS No. 5 & 6.—This letter was written in 1859 and not in 1860, as Hay charges, and as he must have known. It was written when Hay, under his agreement, should have paid off Fowle's debt and re-

leased the turnpike stock held as collateral security. It was written only about 60 days after Hay had made his agreement with me. From this letter it appears he had gotten into difficulties which I regarded as an excuse for his not settling the debt or buying the stock &
75 holding it. In confirmation of the date I assign to this letter, I herewith file a copy of a letter from Hay in reply to it, dated Nov'r 4, 1859, and marked Exhibit No. 9.

EXHIBIT No. 7.—This letter has no connection whatever with the matter in controversy, and was introduced merely to create prejudice against me on account of my opinions. It is, however, valuable as showing the personal relations between Hay & myself up to a very short time before I left Alexandria. It was written April 20th, 1861, while my family were absent from Alexandria, & I was expecting to go after them. I herewith file a copy of his reply to this letter as an exhibit marked No. 18. The circumstances of the case I remember; I made something handsome out of it, and but for the war would have collected the claim. It was written, as were sometimes his letters to me, without name or date.

EXHIBIT No. 8.—This letter shows that on the 27th April, 1861, I was trying to make Hay assign me my interest in certain property which we owned jointly. In his answer Hay states at this time
76 he had employed counsel & was trying to sell the railroad. Yet, in connection with his statement reference is made to his letter to me dated March 9th, marked Exhibit , in which he says he keeps an account of the matters between us in bank. This exhibit is introduced merely to create prejudice.

EXHIBIT No. 9.—This exhibit is dated May 9th, 1861, & is also produced to create prejudice; written only a few days before I left Alexandria to go after my family. In this I still urge Hay to assign me my interest in certain patent property to which I was entitled. I propose in this exhibit to try and have it introduced Washington City & to attend to it personally. Thus Hay, by this exhibit, shows I had no purpose of leaving Alexandria as my residence; while in his answer Hay swears that this time I was removing the rolling-stock of the A. & W. R. R. Co. for the express purpose of defrauding him, & that he had employed Jos. B. Stewart, as his counsel, to sell the road under some of the judgments to which he had no claim.

EXHIBIT No. 10.—This exhibit is also introduced merely to
77 create prejudice on account of my opinions, and for no other purpose. It was written May 11th, 1861, and shows that Hay and myself were then occupying kind relations. I still urge him in this exhibit to assign me certain property which belongs to me, but is held in his name, & close my letters with my opinions and wishes as to passing events.

EXHIBIT No. 11.—This is dated May 17, '61, and was probably the last letter written Hay; for a few days after this Alexandria was occupied by the U. S. troops. In this letter, however, I urge him to assign me my interest in certain property to which I was entitled; it, however, was never done, and all intercourse between us was soon after cut off.

In these letters of mine, made exhibits by Hay, I say nothing about the R. R., for the reason that this matter had been settled between us, & Hay had assigned me all the interest he ever had. If, as charged by Hay in his answer, he was at this time engaged with Jos. B. Stewart in trying to sell the road under some of the judgments, can it be supposed I would not have referred to it in some of these letters of
78 mine in which I was urging Hay to convey to me certain property

which belonged to me? There is not a word of truth in his statement. And these exhibits, produced by Hay himself, substantiate & confirm all the allegations of my bill.

EXHIBIT No. 12.—This paper was written more than fifteen years ago, and has no sort of connection with the matter in controversy. And further, this deponent saith not.

(Signed) JAMES S. FRENCH.

79 FRANCIS L. SMITH, a witness of lawful age, being first duly sworn on the Holy Evangelists of Almighty God, deposeth and saith as follows:

Ques. 1. State whether or no James S. French, in 1859, sold to Jos. R. Anderson, of Richmond, Va., in payment of a debt due him by the Alexandria and Washington R. R. Co., certain lands belonging to said French, lying near Old Point Comfort, Virginia.

Answer No. 1. According to my recollection, he did.

Ques. 2. Who prepared the deed of conveyance?

Ans. No. 2. I am satisfied that it was prepared by me.

Ques. 3. Did his wife relinquish her dower in the same?

Answer 3. As my memory serves me, Mrs. French did join in the deed.

Ques. 4. Did you or not, in 1859, compromise with James S. French certain claims of Morris, Tanner & Co., and R. Archer & Co., and an individual claim of your own against the Alexandria & Washington R. R. Co., which were assigned to Alexander Hay? If so, state if you can the amount paid for said claims, and by whom.

Ans. 4. I did; acting as the attorney of said parties. No payment of said claims, however, was made to me, but was, I believe, made to

80 R. Archer & Co. and Morris & Tanner by James S. French. Mr. French settled my individual account against the Alexandria and Washington Railroad Company. The full amount of the account was, I think, $1,000, but I received $400 in discharge of it. My receipt, I believe, states that said amount was paid to me by Alexander Hay, to whom I assigned the account without recourse; but I am satisfied that I received said amount ($400) at the hands of James S. French. And further this deponent saith not.

(Signed) FRANCIS L. SMITH.

81, 82 STATE OF VIRGINIA,
*Alexandria County:*

I, Francis L. Smith, jr., of Alexandria, Virginia, do hereby certify that under an order of the supreme court of the District of Columbia, of 31st of May, 1869, the foregoing depositions were duly taken, sworn to, and subscribed before me, at the times and places mentioned.

Given under my hand this 29th day of June, 1869.

FRANCIS L. SMITH, JR.

Fee for taking deposition, $40.00.

83 *Exhibits to French's deposition.—Filed June 30, 1869.*

EXHIBIT No. 1.

MY DEAR SIR: They send you from York to-morrow, by express' 5,000 less discount; buy up the accounts for me; give the currency circulation, as I am forced to ask favors at home for a short time, and would not like the currency to go back in packages for coin. Of course, you buy at the best possible advantage.

A. H.

N. Y., *Aug.* 22, '59.

84 Ex. No. 2.

ALEXANDRIA, *Aug. 27th*, 1859.

Clerk of county court of Elizabeth City County, Virginia:

The judgment of the county court of Alexandria County, in the name of T. W. Wason & Co. vs. The Alexandria & Washington R. Road Company and James S. French, docketed in your office, has been assigned to Alexander Hay. Please make a note of it in your record-book.

BRENT & KINZER,
*Att'ys for Wason & Co.*

In the county court of Alexandria County, Va.

Judgment February term, 1858, for $1,243.64 with interest on $1,241.89 from the 27th April, 1857, till paid debt and $9.06 costs.

BRENT & KINZER,
*Pl'ffs' Att'ys.*

$356.64. In consideration of three hundred and fifty-six dollars and sixty-four cents to us in hand paid, we hereby transfer, assign, and set over (without recourse to the plaintiffs) the above-mentioned judgment to Alexander Hay, esq'r., with full authority to him to use the names of the plaintiffs, at the cost of said Hay, in any proceedings he may desire to institute thereon.

Given under our hands this 27th August, 1859.

T. W. WASON & CO.,
By BRENT & KINZER,
*Their Att'ys.*

The above judgment has been docketed in the clerk's office of the county court of Elizabeth City County, Va.

B. & K.

85 In the Alexandria circuit court.

| | |
|---|---|
| CHARLES Y. MORRIS, JOHN F. Tanner, & Joseph R. Anderson, joint partners, under the firm-name of Morris & Tanner, *vs.* JAMES S. FRENCH. | In May term, 1859, $2,410.87, with interest on $1,205.43, part thereof, from the 6th day of Feb'y, 1856, and $120.43, the residue thereof from the 6th of June, 1856, till paid debt & costs of $9.45. |
| SAME *vs.* SAME. | In. May term, 1859, $437.17, with int. from 7th March, 1856, till paid debt & costs, $10.76. |
| SAME *vs.* ALEX'R'A & WASH. R. R. CO. | Plaintiffs' costs, $7.65. |
| SAME *vs.* SAME. | Plaintiffs' costs, $7.65. Costs of abstracts, 1.00. |

Copies. Teste:

R. A. SINCLAIR, *Clerk.*

In consideration of the sum of one thousand and fourteen dollars and forty-three cents ($1,014.43) to us in hand paid, we hereby assign and set over the within-named judgments, debt, interest, and costs, to Alexander Hay, esq'r., without recourse to us, (the plaintiffs therein;) and we hereby authorize the said Alexander Hay to use the names of the plaintiffs in said judgments at his own costs, in any proceedings he may desire to institute on said judgments or either of them.

Given under our hands this day of September, 1859.

MORRIS & TANNER.

86 *Alexandria & Washington Railroad Co. to R. Archer & Co. Dr.*

| | | | |
|---|---|---|---|
| 1855. | | | |
| Dec'r 15. | To 317 rail-plates, 400 at 4½ cents | | $18 |
| | Freight, &c | | 2 00 |
| | | | $20 00 |
| | Int. to 1st Sept'r, 1859 | | 4 45 |
| | | | $24 45 |
| 1856. | | | |
| | Note due this day protested | $534 42 | |
| Jan'y 23d. | Protest | 2 25 | |
| | | 536 67 | |
| | Int. 1st Sept'r, 1859 | 116 16 | |
| | | | 652 83 |
| April 4. | Note due this day protested | $376 52 | |
| | Protest | 2 25 | |
| | | | 378 77 |
| | Int. to 1st September, 1859 | | 77 47 |
| July 23d. | Note due this day protested | $534 43 | |
| | Protest | 2 25 | |
| | | 536 68 | |
| | Int. to 1st Sept'r, 1859 | 100 05 | |
| | | | 636 73 |
| Sept'r 10th. | Note due this day protested | $450 18 | |
| | Protest | 2 25 | |
| | Int. to 1st Sept'r, 1859 | 80 68 | |
| | | | 533 11 |
| Oct'r 4. | " due this day protested | $387 49 | |
| | Protest | 2 25 | |
| | | 389 74 | |
| | Int. to 1st Sept'r, 1859 | 68 05 | |
| | | | 437 79 |
| | | | $2,761 15 |
| One-fourth is | | | $690 29 |

87 *The Alexandria & Washington R. R. Co. to Francis L. Smith Dr.*

| | | |
|---|---|---|
| 1859. | | |
| Sept'r 8. | To fees due me for professional services to date | $1,000 |

In consideration of the sum of four hundred dollars, paid me by Alexander Hay, esqu'r., I hereby transfer the above account to said Hay without any recourse to me.

FRANCIS L. SMITH.

SEPT'R 8, 1859.

ALEXANDER HAY, ASSIGNEE,
*vs.*
THE ALEXANDRIA & WASHINGTON R. R. CO.

O. B. No. 2, page 164, in the office, March 21st, 1860. $1,000, with interest from 8th of September, 1859, till paid debt & costs, $6.50.

In the circuit court of Alexandria County, Virginia, May term, 1858.

T. W. WASON & CO.
*vs.*
JAMES S. FRENCH.

Judgment for $6,719.68, with interest on $1,218.85, from 5 February, 1857; and on $1,224.82 from 5 March, 1857; and on $1,230.00 from 7 April, 1857; and on $3,034.70 from 27 April, 1857, till paid, and $11.96 costs.

BRENT & KINZER,
*Pl'ffs' Att'ys.*

$1,927.92]

In consideration of nineteen hundred and twenty-seven $\frac{92}{100}$ dol-
88 lars to us in hand paid, we hereby transfer, assign, and set over (without recourse to the plaintiffs) the above-mentioned judgment to Alexander Hay, esqu'r. And we also assign, transfer, and set over to the said Alexander Hay, esqu'r., without recourse to the plaintiffs, a certain other judgment of the circuit court of Alexandria County, Virginia, rendered at the November term, 1857, in the suit of T. W. Wason & Co., plaintiffs, against The Alexandria & Washington Railroad Company, upon the same causes of action, as those in the case of Wason & Co. vs. French. And we authorize the said Alexander Hay, esqu'r., to use the names of the plaintiffs at his own costs, in any proceedings he may desire to institute on said judgments, or either of them.

Given under our hands & seals this 27th August, 1859.

T. W. WASON & CO.,
By BRENT & KINSER,
*Their Att'ys.*

| | |
|---|---|
| 1st debt | $1,243 64 |
| Int. on $1,241.89 from 27th April, 1857, to 27th August, 1859 | 173 86 |
| Costs of suit | 9 06 |
| | $1,426 56 |
| 2d debt | 6,719 68 |
| Int. on $1,208.85 from Feb. 5, 1857, to 27th August, 1859 | 187 00 |
| 89 " " $1,224.82, 5 March, '57 | 182 12 |
| " " $1,230.00, 7 April | 175 31 |
| " " $3,034.70, 27 | 424 90 |

| | |
|---|---|
| Costs of suit | 11 99 |
| vs. R. R. Co | 10 42 |
| | 4) 9, 138 25 |
| | 2, 284 56 |

| | |
|---|---|
| $1, 927 92 | |
| 356 64 | |
| $2, 284 56 | |

BRENT & KINSER.

Received of Morris & Tanner, by James S. French, esqu'r., ninety-seven dollars and forty cents, ($97.40,) being my fee and the costs of suits in the circuit court of Alexandria, in the name of Morris & Tanner against said French and the Alexandria & Washington Railroad Company, and which includes seventeen dollars and thirty cents to be paid to Carlisle & Maury on their fee, as per statement below.

FRANCIS L. SMITH.

SEPT'R 8, 1859.

| | |
|---|---|
| Carlisle & Maury fee | $17 30 |
| F. L. Smith fee & suit taxes | 26 00 |
| One per cent. comm's for same | 34 59 |
| Court charges | 35 51 |
| | $113 40 |
| Deduct writ tax embraced in court charges above | $6 00 |
| Taxed attorney's fee embraced in same | 10 00 |
| | $16, 00 |

Copies. Teste:

J. TACEY,
*Clerk of Alexandria County.*

90 EXHIBIT NO. 3.—*Note.*

Doll's 16,607.87.] WASHINGTON, D. C., *April* 4, 1857.

Thirty days after date the Alexandria & Washington Railroad Company promise to pay the order of James S. French and Walter Lenox, for value received, sixteen thousand six hundred and seven dollars $\frac{87}{100}$ without offset, negotiable and payable at the Bank of the Metropolis, with interest from date.

JAMES S. FRENCH,
*Pres't Alex'r & Wash. R. R. Co.*

Endorsements:
"JAMES S. FRENCH.
"WALTER LENOX."

*Assignment.*

For value received, I hereby assign to James S. French a note or bond executed by him, as president of the Alexandria and Washington Railroad Company, to Joseph R. Anderson, of Richmond City, Virginia, and endorsed by himself and Walter Lenox, and by the said Anderson

assigned over to me, said note being for the purchase of two locomotive-engines built by said Anderson for said railroad company.

ALEXANDER HAY.

WASHINGTON, *May 23d*, 1859.

*Clerk's certificate.*

VIRGINIA,

*Clerk's Office, Alexandria Circuit Court:*

I, Jefferson Tacey, clerk of said circuit court, do certify that the foregoing are true copies of two papers filed in a certain action of law
91 depending in said court, wherein Alexander Hay, assignee, was plaintiff and the Alexandria & Washington Railroad Co. was defendant.

Witness my hand and the seal of said court this 25th day of June, A. D. 1868.

[SEAL.] J. TACEY.

[Stamp.]

(A copy.)

92 Ex. No. 4.

NEW YORK CITY, *September 23d*, 1859.

B. H. BERRY, Esquire,

*Clerk of Alexandria County, Va.:*

SIR: A judgment obtained in your office by T. W. Wason & Co. against the Alexandria & Washington Railroad Company and against James S. French, has lately been assigned to me. You will therefore please endorse on said judgment a release of all liability on the part of said French, he being hereby exhonerated by me; and for making said release this shall be your authority.

Given under my hand this 23d day of September, 1859.

ALEXANDER HAY.

Witness to signature of Alexander Hay:
ISRAEL STONE.

STATE OF NEW YORK,

*City of New York, to wit:*

This day personally appeared before me, W. J. A. Fuller, a notary public in and for the city of New York, Alexander Hay, who acknowledged the foregoing signature to be his act and deed.

Given under my hand & seal this 23d of September, 1859.

[SEAL.] W. J. A. FULLER,
*Notary Public.*

[Stamp.]

A true copy. Teste:

J. TACEY,
*Clerk Alex'r Cir. Ct, Va.*

JUNE 25, 1868.

93 Ex. No. 5.

NEW YORK CITY, *September 23d*, 1859.

R. A. SINCLAIR, Esquire,
*Clerk of the Superior Court of Alexandria County, Va.:*

SIR: You will please enter on the judgments in your office obtained by T. W. Wason & Co., and Morris, Tanner & Co., or by Morris & Tanner against the Alexandria & Washington Railroad Company and against James S. French, which said judgments have been assigned to me, a release of all liability on the part of said French, he being hereby exhonerated by me from all obligation on account of said claims; and this shall be your authority for making such release.

Given under my hand this 23d day of September, 1859.

ALEXANDER HAY.

Witness as to signature of Alexander Hay:
ISRAEL STONE.

STATE OF NEW YORK,
*City of New York, to wit:*

This day personally appeared before me, W. J. A. Fuller, a notary public in and for the city of New York, Alexander Hay, who acknowledged the foregoing signature to be his act and deed.

Given under my hand and seal this 23d of September, 1859.

[SEAL.] W. J. A. FULLER,
*Notary Public.*

A true copy. Teste:
[SEAL.] J. TACEY,
*Clerk Alex'r Cir. C't.*

JUNE 25, 1868.

94 Ex. No. 6.

NEW YORK CITY, *September 23d*, 1859.

Whereas I have heretofore, within the last month or two, purchased and had assigned to me certain claims against the Alexandria and Washington Railroad Company, for which James S. French, of Alexandria, Virginia, is personally liable, to wit, a claim due T. W. Wason & Co., on which judgments have been obtained in Alexandria County against the said railroad company and against the said French, the exact amount of which will be seen by reference to the assignments to me; a claim due Morris, Tanner & Co. by the said railroad company, endorsed by the said French and Walter Lenox, on which judgments have been obtained in Alexandria County aforesaid against the said railroad company and the said French, the exact amounts of which will be seen by reference to the assignment to me; and also a debt due R. Archer & Co., on which no judgments have been obtained against the said French and railroad company, although the said claim is endorsed by the said French & Lenox, the exact amount of which debt will appear by reference to the assignment to me, the exact dates of which several assignments and amounts of claims are not stated, because the papers are not before me and neither the amounts or dates of assignments are remembered by me. But for value received of the said James S. French,

95 I hereby release him from all obligation on account of said claims,

and will, whenever required, make any further release which may be necessary in order to exhonerate him from all liability on account of said debts or claims, and the clerks of the superior and county courts of Alexandria County, Virginia, are hereby authorized and requested to endorse on all said judgments a release of all liability on the part of said French.

Given under my hand & seal this 23d of September, 1859.

ALEXANDER HAY. [SEAL.]

Witness to signature of Alexander Hay:
ISRAEL STONE.

STATE OF NEW YORK,
*City of New York, to wit:*

This day personally appeared before me, W. J. A. Fuller, a notary public in and for the city of New York, Alexander Hay, who acknowledged the foregoing signature to be his act and deed.

Given under my hand & seal this 23d September, 1859.

96 For value received I hereby assign to James S. French a bond or note due Joseph R. Anderson, of Richmond, Virginia, by the Alexandria & Washington Railroad Company for the purchase of two locomotive engines, which said note is endorsed by James S. French and Walter Lenox, and which note is to be assigned to me by the said Joseph R. Anderson, as per agreement.

New York City, Sept'r 23d, 1859.

ALEXANDER HAY.

Witness to signature of Alexander Hay:
ISRAEL STONE.

STATE OF NEW YORK,
*City of New York, to wit* to wit:

This day personally appeared before me, W. J. A. Fuller, a notary public in and for the city of New York, Alexander Hay, who acknowledged the foregoing signature to be his act & deed.

Given under my hand and seal this 23d day of September, 1859.

[SEAL.] W. J. A. FULLER,
*Notary Public.*

[Stamp.]

A true copy. Teste:

JEFFERSON TACEY,
*Clerk Alex'r' Cir. C't, Va.*

JUNE 25, 1868.

97 EX. No. 7.

NEW YORK, *Sept.* 10, 1859.

MY DEAR SIR: Yours received; I will send you the release to-morrow. I am quite feeble. Will be on if able in a few days. Let me know where I can find you about Wednesday. The enemy are preparing a bill to prevent us from suing and get it before Nelson.

Will write to-morrow; mail closes.

A. HAY.

Ex. No. 8.

PHILADELPHIA, *Vine street*, 29 *Feb'y*, 1860.

MY DEAR SIR: I arrived here to-day quite sick, and the enclosed decision, I tell you confidentially, makes me feel as if I should quit and retire. I have a wife in very delicate health, and five children dependent upon me, and would it not be prudent for me to quit and take care of what funds I have? Judson has sued all round. Of course he won't try any case until he gets Dickerson on the bench, but his course injures us much.

A. HAY.

You said you would send me a form for a will, by which the money left my daughters should be so secured that they should have the interest only, and in no way should it pass from them.

The decision referred to above was on a printed slip cut from a newspaper & pinned to the original letter.

98 Ex. No. 9.

ASTOR HOUSE,
*New York*, *Nov.* 4, 1859.

MY DEAR SIR: In reply to yours of the 3d inst., asking why I did not bid for the turnpike stock, I had others interested with me and who declined doing so after reflection, because we would not buy a lawsuit. If you & Mr. Fowle could not compel the Alexandria, Loudon & Hampshire Railroad to pay for occupying the turnpike, how could we do so, entire strangers? And if this company would occupy the turnpike, why could not anybody else? Hearing the stock of the turnpike was to be sold, I wrote to Mr. Fowle about it, and would like to own it, but finding I could not, except accompanied with a lawsuit involving the rights of the turnpike company, we declined having anything to do with it.

Yours truly,

ALEXANDER HAY.

TO JAMES S. FRENCH, Esq'r.
*Alexandria, Virginia.*

99 EXHIBIT No. 10.

N. Y., *Aug.* 29.

MY DEAR SIR: This moment returned from the East. This is the place to try the chair. What I want is some few made indifferent or to hold different rails. Where can they be properly made? As soon as I get them I will see Law, who is the R. R. king of this city. Will write you to-morrow and let you know my movements.

A. H.

This letter is written on the blank side of a printed card of Horace H. Day, the card printed June 24, 1860.

J. S. F.

EXHIBIT No. 11.

N. Y., *Aug.* 30, 1'60.

D'R SIR: I go home this evening; address me there. What size should the chair be made? Cannot you have me exact mould made? I think it a

good thing? It should be in England. What is the form? If you think as I do, get up the papers or tell me how to do it, and I will have it done immediately. Must I send model and drawings? D. says I should loose no time in doing it if it is a good thing. Let me hear from you.

A. H.

100 EXHIBIT No. 12.

PHILADEL'A, *Nov.* 2, 1860.

MY DEAR SIR: I hoped to *off* seen you yesterday in Baltimore. Have you received the castings, and can you have model made? The tower is closed up in a box in N. Y. I go there on Monday to stay until about the 20' to mature plans, &c., and will be South about the 22 for winter campaign. Let me hear from you often and address me after Monday to N. Y.

Truly, &c.,

A. H.

EXHIBIT No. 13.

MY DEAR SIR: Yours with the assignments are before me. Is it prudent at this time to make them; and, if so, had we not better annex a clause "no grant shall be made unless jointly?" I have among my papers in bank a statement of these things between us, but let me hear from you, and I will do as you desire.

Truly and faithfully, your friend,

A. HAY.

N. Y., *March* 9.

Address me at home.

This letter is written with a pencil, and on the back of a printed bill of Horace H. Day, heading of which is New York, 1861.

101 EX. No. 14.

Whereas I, Alexander Hay, of the city of Philadelphia and State of Pennsylvania, did obtain letters patent of the United States for certain improvements in bearings for railroad axles, carriages, &c., dated December 6th, 1859, number of patent, 26352; also for certain improvements in the mode of making shoes and gaiters, patent dated December 20th, 1859, and numbered 26493; also a patent for certain improvements in railroad chairs, dated August 21st, 1860, and also a patent for certain improvements in India-rubber springs, dated August 30th, 1859; and whereas James S. French, of Alexandria, Virginia, is desirous of acquiring an interest in said patents: Now, this indenture witnesseth, that, for and in consideration of the sum of two thousand five hundred dollars to me in hand paid, the receipt whereof is hereby acknowledged, I have assigned, sold, and set over, & by these presents do assign, sell, and set over, unto the said James S. French one equal undivided one-half interest which I have in said invention as
102 secured to me by letters-patent a' above stated, to be held and enjoyed by him, the said James S. French, for his own use and behoof, and for the use and behoof of his legal representatives to the full

end of the terms for which said letters-patent were respectively granted, together with all renewals and extensions of the same as fully and entirely as the same would have been held and enjoyed by me had this assignment not been made. In testimony whereof I hereunto set my hand and seal this fourth day of March, 1861.

ALEXANDER HAY. [SEAL.]

Ex. No. 15.

The deposition of Oscar A. Stevens, taken before the undersigned, the 18th day of February, 1867, at his office, in the city of Alexandria, in behalf of complainants, to be used as evidence in the suit of the Alexandria & Washington Railroad Company vs. Washington, Alexandria & Georgetown Railroad Company.

*Deposition of O. A. Stevens.*

O. A. STEVENS having been sworn, testifies:

Ques. 1st. State if you know anything of the removal of the iron from the Alexandria & Washington Railroad in 1861 or 1862. If yes, state by whom it was removed and its value, and what disposition was made of its proceeds.

103 Answer. I do know of the removal of said iron; it was removed at the instance of Joseph B. Stewart in 1861, I think, and was sold to a Pennsylvanian named Faux. I am not positive of its value, but think it was sold for over ten thousand dollars; the proceeds of sale went into the hands of Joseph B. Stewart, but have never been accounted for by him. I discovered that there was an error in the weight of the iron, and followed Faux and obtained from him between six and eight hundred dollars additional to what he paid Joseph B. Stewart, which money I paid to Joseph B. Stewart. There was other iron belonging to the Alexandria & Washington Railroad Company, which was turned over to the Washington, Alexandria & Georgetown Railroad Company by the Government, and was sold for about one thousand & fifty dollars, and the proceeds paid to Mr. Leonard Huye, the treasurer of the Washington, Alexandria and Georgetown Railroad Company.

The witness wishing to examine certain papers in his possession, the further taking of his deposition is adjourned to a future day.

W. C. YEATON,
*Comm'r.*

FEB. 18TH, 1867.

104 Ex. No. 16.

CITY OF WASHINGTON,
*District of Columbia:*

ALEXANDER HAY, upon oath, states that he is informed that James S. French has exhibited before the Hon. John C. Underwood, in the U. S. district court for Virginia, an affidavit coupled with an assignment from this affiant of certain judgements in Alexandria County court, Virginia, and claimed the said judgements thereby belonged to him.

This affiant feels it to be his duty to state that all such statements, when and whereever made on the part of said French, or any one else in his behalf, are utterly false and untrue. This affiant would carefully state that said judgements belong to this affiant, in whose name they stood

upon the docket; that affiant had large money transactions with the said French, all, however, much to the detriment of this affiant; that, holding such judgments against the said Alexandria and Washington Railroad Company, and the road not earning sufficient amount, as affiant believes, to pay its running expenses, and there being no right to cross the Potomac, whereby to conduct a business which would enable the road to pay, and, besides, there being three deeds of trust on said road having precedence over the judgements belonging to this affiant, this
105 affiant submitted to said French a proposition to state what actual sum of money he could and would in good faith pay this affiant, and take all affiant's interest in said railroad. The sum of ($5,000) five thousand dollars cash was named by said French, and which was stated in a memorandum of agreement, to the effect that when said sum of money was paid to this affiant, which was understood was to be done in a short time, the said judgments should be assigned to said French. In agreeing to accept the small sum of ($5,000) five thousand dollars, affiant hoped to prompt said French to do something, and to save to affiant that much of what promised to be a total loss to this affiant. But, as soon as said French was invested with said memorandum of agreement, he made no effort whatever to comply with its terms, so far as this affiant knows and believes, and never paid or tendered to this affiant one cent of the money. And when said French subsequently stripped said road of its rolling-stock and went with it himself into the rebel lines, affiant regarded, as he had a right to do, that said conditional agreement was abandoned. That said judgments never were assigned to said French, and were not to be until such money was paid, and he having wholly failed to pay said money as above stated, acquired no rights
106 whatever in or to the same. That affiant was only paid such judgments by the Washington, Alexandria & Georgeton Railroad Company, which was organized after the trustee's sale on the 10th day of April, 1862, and to which company the said judgments each and all belong.

This affiant further states the deed of trust and decree in chancery against the said Alexandria & Washington R. R. Co., in the name of Fowle, Snowden & Co., was purchased and paid by this affiant and his associates with a view to the formation of a new company, and that affiant was reimbursed by the said new company, to wit, the Washington, Alexandria & Georgetown R. R. Co., to which the said deed of trust and decree assigned by I. Louis Kinzer, the attorney and Snowden of the firm of said Fowle, Snowden & Co., and to which company the said deed of trust and decree now belong. And affiant further saith not.

ALEXANDER HAY.

Subscribed and sworn to before me this 22d February, 1867.
[SEAL.] JOHN F. CALLAN,
*Notary Public.*

A true copy.
[SEAL.] W. H. BARRY,
*Clerk U. S. Cir. C't, District of Va.*

107 Ex. No. 17.

U. S. circuit court for district of Virginia.

HORATIO R. RIDDLE & OTHERS
*vs.*
JAMES S. FRENCH.

JOSEPH B. STEWART, being duly sworn according to law & says, that he is the trustee substituted in the place of Walter Lenox, as set forth in the bill of complaint herein; that at the time of the application for his appointment before said county court he made diligent enquiries to find the said French, or some director or agent of the Washington & Alexandria Company, within the Federal lines, & could not find any such person. And this deponent further says, that after deducting the expenses of the trustee sale of the said road or its property, the purchase-money was appropriated by him to the payment of the coupons of interest then over-due on the $30,000 Thornton's bonds secured by the deed of trust to the said Walter Lenox. And this deponent further saith, that after this deed to Alexander Hay & Joseph Thornton & the Washington, Alexandria & Georgetown Railroad, the latter company became duly organized and proceeded to build a bridge over the Potomac River, after receiving possession of the said road from the Government of the United States, equipped, constructed, & operated said road, investing therein large sums. That after the legislature of
108 Virginia authorized the increase of capital stock & the issue of bonds, the said capital was increased, so that with the original stock it amounted to $500,000; for all of which stock was duly issued, which was sold for about par in the public markets in Washington, New York, & other places, & none of it for less than 80 ct's on the dollar. That coupon bonds for $300,000, secured by a mortgage upon the franchises and property of the road, were issued, & negotiated in the *the* public markets of the country for nearly or about par. That the result of these investments in capital stock & bonds, or the avails thereof, exceeding six hundred thousand dollars & more, were devoted in good faith to the improvement and building & operating of the said road in excess of its receipts; & that the Fowle & Snowden & Co. mortgage in full was paid off by deponent as agent of the company, and was paid to I. Louis Kinzer, the attorney of Fowle, Snowden & Co., or to Mr. Snowden personally. That all the judgements against the Washington & Alexandria Company, as appears by the clerk's certificate, hereto annexed, have been paid. That deponent is unable to specify that every dollar, principal & interest, of the same has been paid, at this distance of time; but he is positive that they have been substantially paid by the said Wash-
109 ington, Alexandria & Georgetown Railroad Company. That other large sums of money were paid on account of claims against the old corporation. That deponent cannot say whether the Joice judgment has been paid, but believes it has not.

And deponent further says, that since his deed as trustee as aforesaid the Washington, Alexandria & Georgetown Railroad Company has been openly in the exercise of its functions as a corporation; that it has been universally recognized as such, issuing stock bonds, &c., contracting liabilities, sueing & being sued, employing agents, & publicly & notoriously exercising all the functions & franchises of the old corporation, & that deponent never heard of the existence of the claims & pretensions of

James S. French in behalf of the said old corporation until about the time of the bringing of his suit referred to in the bill herein.

And the deponent further states, that he is able to speak positively of the facts hereinbefore set out, because he was during all the period hereinbefore referred to the secretary & director of the Washington, Alexandria and Georgetown Railroad Company, & actively engaged in its management.

And this deponent asserts that he never combined with any persons to defraud or injure the Washington & Alexandria Railroad, but
110 in all his actings and doings in the premises has acted in full & entire good faith.

JOSEPH B. STEWART.

Sworn to this 21st day of February, 1867, before me.

JOHN C. UNDERWOOD,
*U. S. District Judge.*

A true copy.
[SEAL.]

W'M H. BARRY,
*Clerk U. S. District Court, Va.*

111 Ex. No. 18.

"In regard to the matter before the assistant se'ty, he said, What management! Why did you let me know what was wanted in this case? L . . .x and others have been here about this case, and I have said it could not be cancelled. Why didn't they state they wanted the back pay? and said further, Make up the case, state what you want, and present it to me. My man said he was obliged to leave, but told him what he could do, to wit, $ . He said, Let the whole case be made up and have it presented, and I will act.

"Now you can do it as well or better than any other person."

This letter from Hay is without name or date, but is in answer to my letter to him, April 20, which he makes an Exhibit H, No. 7; was written in 1861, a short time before I left Alexandria.

J. S. F.

112 *Reference to auditor.—Filed Oct.* 21, 1869.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY. } 1337. Equity docket 9.

This cause coming on to be heard on this, the 21st day of October, 1869, on the bill, answer, exhibits, replication, and proofs, and it appearing to the court that the complainant is entitled to the account prayed for in his bill, it is therefore ordered, adjudged, and decreed that it be referred to the auditor of this court, to take an account of the moneys advanced by the defendant to the complainant at any time as stated in the answer, and also of any sums realized by the said defendant from the judgments assigned to him by the complainant; and that all other matters are reserved until the coming in of the auditor's report. The auditor is required to hear the testimony offered by either party on reasonable notice.

BY JUSTICE OLIN.

113 *Cross-bill.—Filed Oct.* 25, 1869.

ALEXANDER HAY
*vs.*
JAMES S. FRENCH. } In equity. No. 1337.

The petitioner, Alexander Hay, of the city of Philadelphia, State of Pennsylvania, brings this his petition in equity against the defendant, James S. French, of the State of Virginia, and for cause of action says:

1. That about the year 1854 the said French and other parties, as corporators, procured a charter for constructing a railroad from the city of Alexandria, Virginia, to a point opposite the city of Washington, on the Potomac River, under the name and style of "the Alexandria and Washington Railroad Company."

2. That a company was organized, consisting of three stockholders, and no more, to wit, James S. French, Walter Lenox, and Robert S. French.

3. That no money was paid in as a subscription to the stock but about $2.00 per share, and was formally paid in by said parties to cover their subscriptions, and was drawn out again and returned to the parties from whom such sum was procured for the purpose, and did not in fact form any part of the capital of said company.

4. That being thus without means, the said French and his associates issued what was called certificates of debt, to the amount of some $60,000, and managed to procure the endorsement of the corporation of Washington on said certificates of debt, as a means of raising money, and which was the only capital which the said company, up to the time referred to, had possessed.

5. That the issuing of these certificates of debt by the said
114 French and his associates, to the amount of $60,000, was followed by executing a deed of trust to secure the city of Washington to that amount, which was soon followed by two additional deeds of trust, one for $15,000, and another for $30,000, making an aggregate of debt to the amount of about $105,000, secured by three deeds of trust, and besides this there was a floating debt of about $50,000, making in all an aggregate of debt about $155,000, created and existing upon said road before it was completed, while the actual amount of capital invested in the construction of said road did not exceed about the sum of $92,000, as petitioner has since been informed by the contractor who built the road, and whose statement petitioner believes to be true.

6. That said company never issued any certificate of stock, or stock-script, as petitioner is informed and believes to be true.

7. That having no bridge, or means of crossing the Potomac River, and not even a charter for building a bridge, the said road terminated in an open space on the south bank of the Potomac River, opposite Washington, without depot or shelter, and was constructed in the most imperfect manner, with flat rails, laid upon wooden stringers, upon bad grades, and stopping as it did so far from the city of Washington, its business was conducted by hiring horses and omnibusses from the end of the road, on the south bank of the Potomac, across the Long Bridge, to the city of Washington, and the Baltimore and Ohio depot.

8. That the road thus constructed, situated, and worked, rendered it impossible for it to earn its working expenses, much less could it provide for the interest on its bonded debt, or create a fund for renewals, which, because of its imperfect construction, was constantly required.

9. That failing to meet its engagements, judgments were taken against said company for large amounts, while interest accumulated on its aggregate debt, so that said company was really insolvent and bankrupt from the day it was organized, and before the said road was built, in the manner above stated.

10. That the said James S. French, while these matters occurred in reference to said road, was a salaried employee of the United States Government in the Patent-Office, which was his only source of capital, except what he borrowed of his acquaintances, never to be repaid, as this petitioner, among others, has fully realized.

11. That said French was constantly importuning the petitioner for money, and petitioner was induced to advance large sums of money to the said French, to aid him in and about said road, no part of which was ever returned.

115 12. That the condition of said road, because of said debts, judgments, and liens, become so involved that the absolute insolvency of said company was a matter of general notoriety.

13. That said French about this time appealed to the petitioner to purchase said judgments against said company, which the said French assured the petitioner would be safe as investments, as the said French and his associates had it in their power to retire and cancel, in whole or in part, the several deeds of trust on said road, securing the debts having priority of lien over said judgments, so that the petitioner would incur no actual risk.

But, on the contrary, petitioner would thereby secure and make good all the advances of money he had made to said company, through said French, as aforesaid.

14. That the petitioner believing that a road, or the link of road connecting by rail the roads leading north and south from Washington and Alexandria, when a railroad bridge should be constructed across the Potomac, would be valuable as an investment, and believing the statement of said French to be true as to the profits that might be realized in the purchase of said judgments, because of his alleged ability to postpone and modify said deed of trust loans as to amounts and time, the petitioner agreed to and did become the sole purchaser of the said judgments against said company, to the amount of about $40,000, including principal and interest, as will more fully appear by the schedule hereunto annexed marked Exhibit A H, No. 1.

15. That the money so advanced by petitioner for the purchase of said judgments was in addition to the money previously advanced by petitioner to said French, as hereinbefore stated.

16. That after the purchase of said judgments, the petitioner found that there was no truth in the representations made by said French that there was any mode by which the said road could be relieved of the said deed of trust liens that were prior to said judgments, or that any of the benefits so promised by the said French were at all probable to result to the petitioner; on the contrary, as soon as the petitioner was completely saddled with the burden of purchasing said judgments, the said French commenced concocting schemes and designs whereby the petitioner was also to assume the burden of purchasing said deeds of trust liens at a further advance of money, or the creating of liability on the part of petitioner equal to the amounts of said debts, and the necessity of making such further purchase was urged upon the petitioner as the only means whereby he could protect his capital, already
116 advanced as aforesaid under the false assurance of said French, but which petitioner declined to do.

17. That as soon as the petitioner declined the further advance of money for the purchase of the large amount of liens on said road, the falsehood and deception in all that said French had represented to petitioner was manifested, in the fact that it was not the purpose of said French, or the said company, as pretended, either to further complete said road, or to operate the same, as constructed, but simply to sell the road to any one who would become a purchaser, at the best price that was possible; and to that end various schemes, plans, and plausible statements, carefully worded, were gotten up by said French, and urged upon the petitioner, to be negotiated with parties designated by said French.

18. That petitioner, being now well convinced that said road never could be made valuable by said company under the management of said French as its president, saw that a sale was the only means of his securing any part of his money advanced to said company, and the amounts paid for said judgments, tried to affect a sale of said road upon the terms proposed by said French, but wholly failed to do so, or indeed to get an offer for the purchase of the road at any price.

19. That said French, while urging the sale and purchase of said road, or the liens on the same, proposed that it should be done so as to include the said French as a party to the purchase, and in a manner that it would have been fraudulent and void, as he being the president of the company could not be a purchaser in his personal right, and a purchase so made would enure to the benefit of the company as such, and would have invested the petitioner with no legal rights as against said company, and hence would have defrauded him out of his money so invested, which the petitioner believes and charges was the real object said French had in view during the whole time he was trying to induce the petitioner to discharge said liens and purchase said road in conjunction with said French, or to cause others to do so, which petitioner declined to do.

20. That petitioner, having become entirely satisfied that all the representations made by said French, which induced the petitioner to invest his money in said road as aforesaid, were entirely false, looked upon his capital as entirely lost, resolved to disconnect himself from said road on the best terms he could, and so expresoed himself to said French.

21. That after much delay and fruitless negotiation, and the condition of said road growing manifestly worse, and the petitioner having
117 resolved to disconnect himself from said road upon some terms, was offered by said French the smm of $5,000 cash for the relinquishment of all rights and liens the petitioner had on said road or against said company, which petitioner agreed to accept, and the said French agreed to pay, as the petitioner supposed, for and in behalf of said company.

22. That on or about the 24th day of August, 1860, the said French presented to the petitioner, to be signed by him, a written instrument, for the stated consideration of $5,000, transferring all said judgments to said French, as his individual property, and not for the benefit of said company, but did not tender the payment of the $5,000 cash, or any part thereof, and at the same time tendered to this petitioner to be executed a full power of attorney, whereby the said French was duly authorized to sell, transfer, dispose of, or compromise the said judgments, as he might deem best, as the agent of the petitioner.

23. That petitioner finding no money was to be paid as expected, and not liking the appearance of said agreement, as worded, for the transfer

of said judgments, and for the protection of the petitioner, added, or caused to be added, the following words, "upon his payment to me of the above-named sum of $5,000, five thousand dollars," and signed said paper, and also signed and acknowledged the said power of attorney; as the said French stated that it was only by the sale or pledge of said judgments that he or the company could raise the $5,000 (five thousand dollars) to be paid to the petitioner before the said agreement transferring said judgments could take effect, as was expressly reserved therein by the petitioner.

24. That the representations made by said French again proved false and deceptive, and the said sum of $5,000 (five thousand dollars) was not paid in whole or in part. On the contrary, the said French again applied to and importuned the petitioner for pecuniary aid, in the most pitiful manner, stating that the reason he had failed to raise the petitioner the $5,000, (five thousand dollars,) was that the report having gone forth to the public that the petitioner had wholly withdrawn his support and credit from said company, that no one valued the said judgments sufficiently to pay or advance the sum of $5,000 (five thousand dollars) for or on the same, wherefore he was not able to pay the petitioner as agreed.

But that if petitioner would come once more to the rescue of said company, and advance money enough to purchase horses and omnibusses to haul and transfer the passengers and freight from the south bank of the Potomac over into Washington City, and to the Baltimore depot, whereby the said road could once more get to work and ap-
118 pear to be earning something, that some one might be induced to advance the five thousand dollars on said judgments, and also to refund to the petitioner the money advanced for the purchase of said horses and omnibusses, and that unless such was done, the said company could not continue to run the road, and that the said French could not pay the said $5,000, and petitioner would not be able to derive any benefits from said judgments, or other money advanced by petitioner to said company as aforesaid.

25. That petitioner being again moved by the solicitations and promises of the said French, agreed to and did intrust to him about $3,000, (three thousand dollars,) to purchase horses and omnibusses in the name of and as the property of this petitioner, but to be used in the manner before stated, which, being done, petitioner would soon be paid the said five thousand dollars for said judgments, and the three thousand dollars advanced for the purchase of said horses and omnibusses, but until such payment the title to the whole of said property vested in the petitioner.

26. That said French, having so obtained the said sum of three thousand dollars or thereabouts from the petitioner, did not purchase any horses or omnibusses, or make any other use of it for the benefit of said road or the petitioner, but fraudulently appropriated the whole of it to his own use, as petitioner believes and charges was the intention of the said French to do at the time he by false pretences obtained the same.

27. That some time after the obtaining of the said three thousand dollars, the said French availed himself of the opportunity afforded by the rebellion, in which he heartily engaged and fully justified, did, on or about the month of May, 1861, remove all the engines, cars, and rolling-stock, and movable property belonging to said Alexandria and Washington Railroad Company on to the track of the Orange and Alexandria Railroad Company, by a tram-road or track, laid by said French

for that purpose, and going with it himself, moved southward with the rebel army as it retreated from Alexandria, sold the said rolling-stock to the rebel government, to be used in the rebellion, tendered his personal services to the leaders of the rebellion to help organize a patent department, sought the position of commissioner of patents for the rebel government, whereby to apply the knowledge and skill he had acquired while employed by the Government of the United States in its Patent-Office.

28. That by the fraudulent conduct of the said French, and his absconding in the rebel lines, he forfeited his agreement with the
119 petitioner, and failed to pay the said five thousand dollars, ($5,000,) besides obtaining the further sum of three thousand dollars, as stated, and also took away the engines, cars, and rolling-stock belonging to said company, which was part of the means of paying said judgments, on rendering the same of some value, as purchased by the petitioner. The said French thus shielded himself from pursuit or capture by placing himself in the heart of the rebellion, thus leaving the petitioner in the helpless, defrauded, and swindled condition as above stated.

29. That after the absconding of said French and the taking away of the said rolling-stock as aforesaid, the road-bed, or what was left of it, was sold at a trustee's sale, under one of said deeds of trust, and petitioner was compelled to purchase said road at public sale, as the only means left the petitioner to protect his rights in the premises, which he did, as any other party had a right to do at said sale.

30. That when the rebellion had proved a failure, the said French returned to Washington City, and has commenced a suit in equity in this honorable court against this petitioner for the recovery of a large sum of money, pretending that he, said French, personally had acquired a bona-fide right to said judgments, though neither he or his said company ever contributed one dollar for the purchase of said judgments, and never paid the petitioner one dollar for them, as aforesaid.

But while pretending that he would and could do so, got about $3,000 more out of the petitioner, and then abandoned his most sacred and solemn agreement with the petitioner, stole away the rolling-stock belonging to the road, and joined the rebellion as stated.

31. That petitioner has answered said suit before this honorable court, and made his answer a cross-bill for the relief hereinafter prayed, setting up and alleging in said answer and cross-bill, in substance, the same matters and things herein repeated and stated as the ground of this suit or cross-action.

But being advised that the technical rules of this honoroble court required a separate bill, or cross-action to be brought in order to secure affirmative relief, and in order to secure a proper decree in the premises, and to protect the equitable rights of this petitioner against said French, who is entirely insolvent and irresponsible, and to be protected against the harrassment of the suits now brought or which may be brought by the said French in the premises, your petitioner brings this suit.

PRAYER.—The petitioner prays the United States writ of sub-
120 pœna may issue requiring the said French to answer all the allegations of this bill as fully as if he was particularly interrogated thereto. The petitioner prays that said French may be required to disclose and state upon oath what disposition he made of the engines, cars, and rolling stock and other material belonging to said road, to whom he sold it, for what price, and that the petitioner may have a decree against said French for the value of said rolling-stock at the time it was

taken away, because of his rights as a judgment creditor, and as the owner thereof by virtue of his purchase at said trustee's sale aforesaid.

The petitioner further prays that said French may be required and decreed to account for and pay to the petitioner the said sum of three thousand dollars ($3,000) or thereabouts so fraudulently obtained from petitioner in his fiduciary capacity as the trustee and agent of the petitioner, as hereinbefore stated and alleged, with interest thereon from the month of about January, 1861.

And the petitioner prays for all general and special relief.

ALEXANDER HAY.
A. G. RIDDLE,
*Of Counsel.*

Subscribed and sworn to before me this 22d day of October, 1869, by Alexander Hay, who declares to the truth of what he states of his own knowledge, and as to what he states upon the information of others he believes to be true.

[NOTARY PUBLIC.] JOHN F. CALLAN,
*Notary Public.*

121 In the supreme court of the District of Columbia.—October 25, 1869.

ALEXANDER HAY, COMPLAINANT,
*against*
JAMES S. FRENCH, DEFENDANT. } No. 1337. Equity docket 9.

The President of the United States to James S. French, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the cross-bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

*Marshal's return upon subpœna to cross-bill.*

Summoned defendant.

A. SHARP, *Marshal.*

NOV. 8, 1869.

122 JAMES S. FRENCH
*vs.*
ALEXANDER HAY. } Bill equity. Doc. 9. No. 1337.

AND

ALEXANDER HAY
*vs.*
JAMES S. FRENCH. } Cross-bill.

*Answer of James S. French to the cross-bill filed in this case.—Filed Jan'y 29, 1870.*

The said respondent now, and at all times hereafter, saving and reserving to himself all and all manner of benefit of saving exception and

advantage to the manifold errors, uncertainties, and insufficiencies of the said cross-bill, for answer thereto, or to so much and such parts thereof as he is advised it material, necessary, competent, or proper for him to answer, answering, says:

That he denies each one and all of the allegations, charges, and statements of matters and things alleged and charged in said cross-bill, so far as they are relevant to the case at issue, excepting such as are hereafter admitted to be true, or such parts thereof as may be qualified or admitted to be true.

In the 31st section of this cross bill the petitioner, Alexander Hay, says that, in his answer to the original bill filed in this cause, (which he called both an answer and cross-bill,) *says that* he set up and alleged in said answer and cross-bill, in substance, the same matters and things which are herein repeated in this cross-bill, and inasmuch as this respondent in his own deposition, in answer to interrogatories filed in this cause, met every allegation and charge, and accompanied his answer with exhibits, which were filed, disproving every material *obligation* in said answer and cross-bill; he begs, with a view to abbreviate this answer, that the answers by him to the interrogatories filed, so far as they are responsive to this cross-bill, may, if the court deem it proper, be regarded as a part of this answer, and that the exhibits filed with his answers to the interrogatories may be regarded as parts of the answer, and referred to as such without duplicating them, which otherwise it would be necessary to do.

123 Respondent admits the 1st section of the cross-bill to be true, also, as charged in the 2nd section, that a company was organized, and that there were only three stockholders, but denies that the three are correctly named. He also denies, as charged in section 3, that only $2 per share was put in the road, and admits so much of sections 4 and 5 as charges that the railroad company executed three deeds of trust, and had a floating debt besides, but says it was less than the amount named, and when the deed was made to secure the city of Washington in the sum of $ this respondent believes the company did not owe a dollar, but had met all its obligations.

A more particular account of the indebtedness of the A. & W. R. R. Co. may be found in his answer to the 1st interrogatory accompanying his deposition, 6th section. In answer to this respondent states that said R. R. Co. never issued a share of stock, deeming it most proper not to do so until the road was completed, and the value of the stock established.

7th. It is admitted the road was constructed with every view to economy, and extended only to the south end of the Long Bridge, but says it was also extended and laid by this respondent from the north end of the Long Bridge, along Maryland avenue, to the Baltimore depot, along the precise route now occupied by it. The company had a charter to cross the river and extend their road into the District of Columbia by way of Georgetown, but were struggling to obtain the privilege of crossing at the Long Bridge.

8th sec. Respondent states in answer to this, that sometimes that part of the road which he was permitted to work paid expenses, and when the Long Bridge could not be crossed it did not, and that he was compelled frequently to aid the R. R. Co. with his private means.

9th sec. In answer to this, respondent admits that the company was in debt, but denies that it ever was either insolvent or bankrupt, but believes it could have been sold at any time for more than its indebtedness.

10th sec. Respondent admits he was employed in the U. S. Patent-Office at a salary of $2,500 while he was operating the railroad, but denies the gross charge in this paragraph, which is unjust and untrue.

11th sec. The several allegations contained in this section this respondent pronounces utterly untrue.

12th sec. It is admitted the company was involved, but denies that its insolvency was a matter of notoriety. Its value was as well understood then as now, and it is believed could at any time have been sold for enough to pay its debts.

124 13th sec. The "about this time" in this paragraph is indefinite, fixes no date whatever, but this respondent admits that in 1859, if that be the time referred to, he made an agreement with Hay, as set forth in his original bill, and more particularly in his answer to the 5th interrogatory, in which Hay to furnish the means to buy up and consolidate the claims against the railroad, which were to be assigned to and held by him, the road remaining bound for them, and for each advance he was to be renumerated in the stock of the company, and that such an investment would have been a safe one, and very profitable to him. But said respondent utterly denies all other allegations in section 13; denies that he (this respondent) ever told Hay that he and his associates had it in their power to cancel or retire the deeds of trust, (if so, he would not have required Hay's assistance,) or that he, Hay, had made any advances to the company which he could thus secure. These allegations are sheer fabrications.

14th sec. Respondent denies that Hay, as here charged, became the purchaser of judgments against the road to the amount of $40,000, and also denies that his Exhibit A. H., No. 1, proves it. The amount purchased by this respondent for Hay, as there stated, was $16,526.52; the amount paid for the same was about $4,500; the receipt for the same and statements were filed with the cases, which were duly assigned to Hay, became matters of record in the circuit court of Alexandria, a transcript or copy of which, duly certified, is made an exhibit with respondent's deposition, marked Exhibit No. 2, and is here referred to.

The amount advanced by Hay to buy up the debts against the R. R. was less than $5,000, (see Hay's letter enclosing the same, Exhibit No. 1, with deposition of this respondent, here referred to,) leaving a balance then unexpended of between 4 and $500, which will be accounted for. The $20,000 claim of Jos. R. Anderson was the property of this respondent, purchased and paid for by him, and although he assigned the same to Hay, he did so because he expected him to carry out his agreement, and wished all the claims purchased to appear in his name; and to show that the same did not belong to him, he (Hay) re-assigned, for value received, this very debt to respondent, (see Exhibit 3, with respondent's deposition,) and the assignment not being witnessed, afterwards re-acknowledged the same before a notary public in New York, (see Exhibit 6,) with said deposition, and enclosed it to this respondent, that he might record it with his reply to the letter of this respondent, dated September 9th, 1859, which is Hay's Exhibit No. 1, thus showing he had no claim to said debt. For a more detailed explanation of

125 Hay's Exhibit No. 1, reference is here made to the answers to the 6th, 7th, 8th, and 9th interrogatories accompanying this respondent's deposition.

Sec. 15 and 16. Respondent denies the allegations in these clauses, but urged Hay to fulfil his agreement.

Respondent denies all the allegations and charges in the 17th section.

Sec. 18. Respondent knows nothing of the allegations contained in this section.

Sec. 19th. Respondent denies all the allegations herein contained.

Sec. 20th. Respondent denies the allegations herein contained, and refers to the letters from Hay, which he has filed with his deposition, to show that the kindest and most confidential relations existed between them.

Sec. 21st. Respondent denies the allegations in this section, but states that Hay having failed to carry out his agreement, this respondent did insist either that he should carry it out or vacate it, and allow him to seek other assistance. That Hay, being unable or unwilling to advance the necessary means, declined continuing his agreement, and sold out to this respondent the claims he had acquired against the road for the amount he had expended in their purchase, giving to this respondent time to seek other assistance and do the best he could with the road. It was for this reason the purchase money was made to carry interest from date. It is utterly untrue that the sale of the claims was a cash sale, and the statement is contradicted by every circumstance connected with it, and is a sheer fabrication.

Sec. 22nd. Respondent admits Hay executed the assignment of his interest and power of attorney as charged.

Sec. 23rd. Respondent denies that Hay expected the sale to be for cash, or that he framed the assignment and added the words charged; all this is mere afterthought. In the answer of Hay in the case of the A. & W. R. R. Co. vs. W. A. & G. R. R. Co., referred to in respondent's deposition, (before the assignment Hay only knew he had given "French a memorandum of some sort,") see sec. 12th of answer, page 31 printed record.

Sec. 24, 25, and 26. Respondent denies the allegations and charges in these sections.

Sec. 27th. Respondent denies every allegation in this section, with the exception of the rolling-stock, which he caused to be removed, and his reasons therefore are set forth in his answer to the 28th interrogatory in his deposition, which is here referred to.

Sec. 28th. Respondent denies the allegations of this section.

126 Sec. 29th. Respondent denies the allegations in this section, but admits the road was sold, and charges that the sale was brought about by a fraudulent combination between the said Hay, Joseph B. Stewart, and others; that the said Hay became the purchaser at the sum of $12,500—whether the said amount was ever paid is unknown to this respondent—and that after the sale the stock of the road was divided out, the said Hay and Joseph B. Stewart, the trustee who sold it, receiving a large share of it; also that Stewart, the authorized agent of Hay, seized upon and sold the old iron as it was removed from the road by the U. S. Government, to the amount of some 11 or $12,000, which has never been accounted for.

Sec. 30th. Respondent admits that he has brought suit for the recovery of these judgments, which he charges to be his individual property, and has submitted the evidence on which he bases his claims, and he also charges, as shown in his answers to the 29th and 30th interrogatories, and the exhibits made a part thereof, that all these judgments were appropriated by said Hay to his own individual use, and that he has received full compensation for them, although he had no title whatever to them, but nevertheless used them as a means for dispossessing your respondent of his road, possession of which he has never yet recovered, but is still involved in litigation for its recovery.

Sec. 31st. Respondent that this cross-bill is a mere repetition of his, Hay's, answer, with this exception: In his answer Hay swears that he

never collected or realized a dollar of these judgments. This averment is not repeated in this cross-bill. The answer to the 30th interrogatory in the deposition of this respondent, with the exhibits referred to, shows that he did receive the full benefit of them. Respondent denies, as charged in this section, that he is either insolvent or irresponsible, but admits it is not through any omission of the party making the charge to bring it about that he is not, for he was the chief instrument in illegally dispossessing this respondent of all the property he had in this part of the country.

This respondent further states that he has at this time, and has had for some time, a judgment against Alexander Hay and Joseph B. Stewart for more than $2,500, on which execution is ordered to issue, for the rents of his dwelling-house, illegally taken from him by these parties, and as yet has been unable to collect any part of it.

In reference to the disposition of the rolling-stock, respondent refers to his answer to the 28th interrogatory in his deposition, and further states that one of the engines was sold to a gentleman named
127 Wallet—his Christian name I do not remember—of North Carolina, and the other, with such remains of the cars as I could collect, also to a gentleman of North Carolina, Fremont, I think, by name, but where residing I don't know. I had the engines repaired at considerable expense, and sold the engines and cars for about $11,000. I never saw either the engines or cars after their removal out of the Orange road, in the spring of 1861, until towards the close of the year.

And having fully answered, this respondent prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully expended.

(Signed) JAMES S. FRENCH.

DISTRICT OF COLUMBIA, *City of Washington:*

James S. French, the respondent in the foregoing answer, makes oath that he has read the foregoing answer, and that the facts stated therein as of his own knowledge are true, and those stated on information and belief he believes to be true.

(Signed) JAMES S. FRENCH.

Subscribed and sworn to before me January 12th, 1870.

R. J. MEIGS, *Clerk.*

128 *Motion to suppress plaintiff's deposition.—Filed Feb'y* 14, 1870.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY. } No. 1337. E'q doc. 9.

And now comes the defendant and moves the court to suppress and remove from the files the deposition of the plaintiff, James S. French, taken in this case, and for the cause of this motion submit:

1st. The said deposition was taken and published contrary to law.

2nd. That the said deposition and every part thereof was taken upon interrogatories which are leading, and are illegal, and were prepared by the said plaintiff to meet answers conveniently pre-arranged, and was taken before the defendant, who is a citizen of Pennsylvania, had time to see the same and advise his counsel of what proper interrogatories to prepare, and with no opportunity to cross the same.

3rd. That defendant, as soon as advised of the existence of said inter-

rogations, at once gave notice, and demanded that this deposition of the plaintiff should be taken under the 63rd of this honorable court, which notice was served on the 23d day of June, and the deposition so taken and now excepted to, was taken on the 29th day of June, 1869.

4th. That the questions propounded by the plaintiff to himself, and the answers given thereto by himself, are illegal and contrary to law; therefore the defendant moves this honorable court that the said deposition may be suppressed, and a proper oral examination ordered as provided by the rules of this honorable court.

A. G. RIDDLE,
*Sol. for Def't.*

129 *Defendant's exceptions to complainant's answers to cross-bill.—Filed Feb'y* 14, 1870.

JAMES S. FRENCH
*v.*
ALEXANDER HAY. } No. 1337. Equity docket 9.

And now comes the defendant, Alexander Hay, and excepts to the answer of the plaintiff as filed to the defendant's cross-bill, and moves that the same be stricken out, and as grounds of such motion shows:

1st. That the said French makes his own deposition, given and taken ex parte, contrary to law, a part of his said answer to the defendant's cross-bill, but does not set forth and show what part of said deposition is offered as part of said answer, whereby the defendant can make proper replication to said answer, or take other proper issue with the same.

2nd. The said answer is generally evasive and not responsive to defendant's cross-bill.

3rd. The said answer introduces and indulges in matters that are not involved in or material to the matters at issue in this suit or cross-bill.

A. G. RIDDLE,
*Sol. for Defendant.*

130 *Order sustaining exceptions to answer to cross-bill.—Filed Feb'y* 17, 1870.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY. } 337. Eq. docket 9.

This, the 17th day of February, 1870, came on to be heard the notice of the defendant in the original bill to vacate the interlocutory decree referring the said original cause to the auditor for an account; and the same being argued, heard, and considered, it is ordered and adjudged that the same be disallowed and overruled.

And also, on the same day, came on to be heard the motion of the said defendant, Hay, to suppress the deposition of the complainant's witness, on file in the said original cause; and the said motion being fully argued, heard, and considered, it is now here ordered and adjudged that the same be disallowed and overruled.

And also, on the same day, came on to be heard the exceptions of the said Hay, complainant, in the cross-bill to the answer of the said French;

and the same being argued, heard, and fully considered, it is now here ordered and adjudged that the said exceptions be sustained, and thereupon, on motion of said French, it is further ordered that the said defendant, French, have leave to amend his answer to said cross-bill on or before the next March rules.

By the court.

131 *Amended answer of complainant to cross-bill.—Filed Feb'y* 25, 1870.

The said respondent now, and at all times hereafter, saving and reserving to himself all and all manner of benefit of saving exception and advantage to the manifold errors, uncertainties, and insufficiencies of the said cross-bill, for answer thereto, or to so much and such parts thereof as he is advised it is material, necessary, competent, or proper for him to answer, answering, says:

That he denies each one and all of the allegations, charges, and statements of matters and things alleged and charged in said cross-bill, so far as they are relevant to the case at issue, excepting such as are hereafter admitted to be true, or such parts thereof as with qualifications are admitted to be true.

Respondent admits the recitals in the first section of the cross-bill are substantially true; he also admits, as stated in 2nd section, that a company was organized, but states that books of subscription were regularly opened, and that only three persons subscribed to the stock, two of whom are correctly named.

132 3rd section. Respondent denies the allegations in this section.

4th & 5 sections. Respondent admits so much of these sections as charges that the railroad company executed three deeds of trust; but states when the deeds *was* made to secure the city of Washington the sum of $60,000, he believes the railroad company was out of debt, having before that time met all their obligations. That some time subsequently to this deed a deed was made to Fowle, Snowden & Co. to secure about $15,000, which said sum was also secured by collateral securities. And a third deed was also made to secure $30,000 in the coupon bonds of the railroad company, which were sold to Joseph Thornton, attorney in fact of his brother Benjamin Thornton, who by fraudulent *mis*representations got possession of the bonds, and only paid on account of them about $55.00. Respondent also admits that the railroad company owed a floating debt, which he is confident could not have amounted to more than $35,000, in place of $50,000 as charged in said cross-bill.

Respondent also admits the statement in the cross-bill to this effect, that the actual amount of capital invested in the construction of said road did not exceed about the sum of $92,000, as petitioner has since been

133 informed by the contractor, who built the road, and whose statement petitioner believes to be true.

Respondent admits the above amount of $92,000 to have been expended up to the time named, as charged herein by said Hay.

6th section. Respondent states and admits that said railroad company never did issue a share of stock, deeming it most proper not to do so until the road was completed and the value of the stock established.

7th section. Respondent admits the road was constructed with every view to economy, and was constructed on the Virginia side to the end of the Long Bridge, and also states it was constructed and extended by

this respondent from the north end of the Long Bridge, along Maryland avenue to the Baltimore depot, along the precise route now occupied by said road.

The A & W. R. R. Co. had a charter at this time to cross the Potomac River, and extend their road into the District of Columbia by way of Georgetown, but were now struggling to obtain the privilege of crossing at the Long Bridge.

8th sec. Respondent states when the Long Bridge was in good order the railroad was renumerative; when travel was suspended over
134 the Long Bridge the railroad could not be worked, and this respondent had to aid it with private means.

9th sec. Respondent admits that the railroad company was in debt, but denies that it was ever either insolvent or bankrupt, but believes the mere franchise of the company could have been sold at any time for more than its indebtedness.

Sec. 10th. Respondent admits he was a salaried employee of the United States Government in the Patent-Office, but denies every other charge or allegation in this paragraph.

Sec. 11th. The several allegations contained in this section this respondent pronounces utterly untrue.

Sec. 12th. Respondent admits the company was involved, but denies that it was insolvent. Its value was as well understood then as now, and it is believed the franchises of the road could at any time have been sold for more money than enough to pay its debts.

Sec. 13th. The "about this time" in this paragraph is indefinite, fixes no date whatever; but this respondent admits that in 1859, if that be the time referred to, he made an agreement with Hay as set forth in his original bill, in which Hay agreed to furnish the means to buy up
135 and consolidate the claims against the railroad, which were to be assigned to and held by him, and for such advances he was to be remunerated in the stock of the company, and that such an investment would have been a safe one, and very profitable to him. But said respondent utterly denies all other allegations in sec. 13th; denies that he, this respondent, ever told Hay that he and his associates had it in their power to cancel or retire the deeds of trust, (if so, he would not have required Hay's assistance,) or that he, Hay, had made any advances to the company, which he could thus secure. These allegations are sheer fabrications.

Sec. 14th. Respondent denies that Hay, as here charged, became the purchaser of judgments against the road to the amount of $40,000, and also denies that his Exhibit A. H., No. 1, proves it. The amount purchased by this respondent for Hay, as there stated, was $16,526.52; the amount paid for the same was about $4,500; the receipts for the same and statements were filed with the cases, which were duly assigned to Hay, became matters of record in the circuit court of Alexandria, a transcript or copy of which, duly certified, is herewith made an exhibit marked No. 2, the same being filed as an exhibit, also, with this
136 respondent's deposition in the original case.

The amount advanced by Hay was less than $5,000. A certified copy of Hay's letter enclosing the same is herewith made an exhibit, marked No. 1, which is also filed with the said deposition, and after the purchase of the claims, set forth in Exhibit No. 2, left at that time unexpended in the hands of this respondent betwen $4 and 500, which will be accounted for.

The $20,000 claim of Joseph R. Anderson was the property of this respondent, was purchased and paid for by him, and although he as

signed the same to Hay, he did so because he expected him to carry out his agreement, and wished all the claims purchased to appear in Hay's name; and to show that the same did not belong to Hay, he, Hay, re-assigned for value received this very debt to this respondent, (see certified copy of assignment, marked Exhibit No. 3, also filed with the aforesaid deposition.) This assignment, not being duly witnessed for record, was made before this respondent had entered into his agreement with Hay; and long afterwards, to wit, in September, 1859, this assignment was by Hay re-acknowledged before a notary public, in New York, in order to be recorded, and duly forwarded to this respondent,
137 showing at that time Hay laid no claim whatever to the Anderson debt; and at this time he had received the statement of the claims bought for him as set forth in his exhibit marked A. H., No. 1.

Sec. 15th. This respondent denies that any money was previously advanced to him as charged in this paragraph.

Sec's 16th, 17th, 18th, 19th, & 20th. Respondent denies all the allegations contained in the 16th, 17th, 18th, 19th, and 20th paragraphs of the cross-bill.

Sec. 21st. Respondent denies the allegations in this section, but states that Hay having failed to carry out his agreement, this respondent did insist either that he, Hay, should carry it out or vacate it, and allow him to seek other assistance. That Hay, being unable or unwilling to advance necessary means, declined continuing his agreement, and sold out to this respondent the claims he had acquired against the road for the amount he had expended in their purchase, giving to this respondent time to seek other assistance and do the best he could with the road; it was for this reason the purchase-money was made to carry interest from date. It is utterly untrue that the sale of the claims was at cash sale, and the statement is contradicted by every circumstance
138 connected with it, and is a sheer fabrication.

Sec. 22d. Respondent admits that Hay executed the assignment of his interest and power of attorney, but denies the other allegations in this paragraph.

Sec's 23rd, 24th, 25th, 26th. Respondent denies all the allegations and charges in these sections.

Sec. 27th. Respondent denies every allegation in this section with the exception of the removal of the rolling-stock, which he caused to be removed with a view to its safety, and for no other purpose.

Sec. 28th. Respondent denies all the allegations and charges in this section.

Sec. 29th. Respondent denies that he ever absconded, as charged, or removed the rolling-stock as charged, but admits the railroad was sold, and charges that the sale was brought about by a fraudulent combination between the said Alexander Hay and one Jos. B. Stewart and others; that the said Alexander Hay became the purchaser at the sum of $12,500. Whether said Hay ever paid this amount or any part thereof is unknown to this respondent, but after the sale of the railroad the stock of the said road was divided out among certain parties, the said Alexander Hay receiving a large part of it, and one Jos. B. Stewart, the substituted trustee, who sold the road, receiving also a large
139 share of the stock of the road for selling the same.

Respondent also charges that Jos. B. Stewart was the authorized agent of Alexander Hay, duly appointed by power of attorney, and actively as such seized upon and sold the old iron as it was removed from the railroad by the U. S. Government in relaying said road, to the amount of some $11 or 12,000, which has never been accounted for.

Sec. 30th. Respondent admits that he has brought this suit for the recovery of these judgments which he charges to be his undivided property, and which the said Alexander Hay has collected and appropriated to his own use, and for which he should account to this respondent, after deducting the $5,000 which the said respondent agreed to pay him for them. This respondent charges that said Alexander Hay received full compensation for them, although he had no title to them, but nevertheless used them as a means for dispossessing your respondent of his road, possession of which he has never yet recovered, but is still involved in litigation for its recovery.

Sec. 31st. This respondent admits that this cross-bill is a mere repetition of Hay's answer to the original bill, with this exception, that
140 in his said answer Hay swears that he never collected or realized a dollar on these judgments, whilst this false averment is not repeated in his cross-bill. This respondent now avers that the said Hay did realize the full benefit of the said judgments, as he has proved by the exhibits referred to in his aforesaid deposition.

Respondent denies the charge made in this section of the cross-bill, that he is either insolvent or irresponsible, but admits it is not through any omission of the party making the charge to bring about that result; for the said Hay was the chief agent in illegally dispossessing this respondent of all the property he had in this part of the country; and to show the falsity of this charge, this respondent states that he now has a judgment rendered in the circuit court of Alexandria, Virginia, for more than $25.00, on which execution has been issued and returned no "effects."

This judgment was for the rent of his dwelling-house in Alexandria, Virginia, illegally taken from him by the said Hay and Stewart, and this respondent has never yet been able to collect any part of it. In further answer to charge of insolvency, this respondent says that he believes the result of his original bill in this case, when fairly
141 brought to a hearing, will show that the said Hay is further indebted to this respondent to the extent of many thousand dollars for the proceeds of the said judgments unjustly and illegally appropriated by him.

And in answer to that part of the prayer of the cross-bill which requires the respondent to disclose what disposition he made of the engines, cars, rolling-stock, and other materials belonging to said road, &c., this respondent says that one of the said engines was sold to a gentleman named Mallet, of North Carolina; and the other engine, with such remains of the cars as could be collected, was sold to another gentleman of North Carolina, whose name, I think, was Fremont. Respondent does not know the Christian name of either of them. The whole amount received for the said engines and cars and all other property of the said railroad sold by this respondent was about $11,000 gross, but before the said property could be sold this respondent was compelled to make repairs at very considerable cost, and the said sum of $11,000 was received in confederate money, which was much depreciated at the time. But this respondent, while fully answering this inquiry, wholly denies that the said Hay has any right to demand
142 an account of the said sale, or has any interest whatever in the same.

And this respondent, having fully answered, prays to be hence dismissed with his reasonable costs in this most wrongfully expended.

JAMES S. FRENCH.

STATE OF VIRGINIA,
*County of Alexandria, to wit:*

James S. French, the respondent in the foregoing answer, makes oath that he has read the foregoing answer, and that the facts stated therein as of his own knowledge are true, and those stated on information and belief he believes to be true.

JAMES S. FRENCH.

Sworn to and subscribed before me, D. S. Smoot, a notary public in and for the county aforesaid, in the State of Virginia, on the 24th day of February, A. D. 1870. Witness my signature & notarial seal.

D. S. SMOOT,
*Notary Public.*

143 *Replication to answer to cross-bill.—Filed Feb'y* 26, 1870.

JAMES S. FRENCH
*v.*
ALEXANDER HAY. } 1337. Equity docket 9.

The complainant joins issue with the defendant upon his answer to complainant's cross-bill.

A. G. RIDDLE,
*For Complainant, Hay.*

144 *Auditor's report.—Filed 27th June,* '70.

JAS. S. FRENCH
*vs.*
ALEXANDER HAY. } No. 1337. Eq. doc. 9.

The substance of this case is as follows:

The complainant heretofore proposed to the defendant to advance money to buy up all the outstanding claims against the Alexandria & Washington Railroad Company, of which French was president. In 1859 Hay did make advances for that object, and French, with the money so advanced, bought up claims, then or subsequently reduced to judgment, amounting to something over $16,500.00, which were assigned to Hay, and stood in his name on the record.

French had also purchased a judgment of one Anderson for nearly $17,000.00, with arrears of interest, with his own means, which
145 he had likewise *had* assigned to Hay, but of which he claimed the real ownership.

In August, 1860, Hay executed an instrument assigning and transferring all his claims against said company to French for the sum of $5,000.00 and interest from date—August 24th—to be held by French as his individual property on his payment of said sum of $5,000.00 and interest. This was not put on record.

French charges that during his absence in the South, pending the war, Hay took advantage of his ostensible record of ownership of these claims, & of the Anderson judgment, to collect and realize the judgments for his own benefit; and the object of this suit is to compel him to account for and pay over to the complainant the amount so realized, less the sum of $5,000.00 and interest, which French was to pay for the claims. Two simple questions of fact have been referred to me to report upon, viz:

146 First. What moneys were advanced by the defendant to the complainant at any time, as stated in the answer? and,

Second. What sums were realized by the defendant from the judgments assigned to him as above mentioned?

After due notice both parties appeared before me with their counsel.

It might be supposed that everything relating to the subject of the reference could have been satisfactorily presented at one sitting. Instead of this, the examination of witnesses occupied near three weeks. A great deal of testimony has been introduced which is wholly irrelevant to the issues in question, and a voluminous correspondence, and other matter equally irrelevant, filed with the auditor. I have been compelled to examine carefully these depositions of nearly 200 pages,
147 to see what light is thrown by them on the questions referred to me.

1st. As to the first question, Mr. French's testimony is explicit, to the effect that he never received more than $5,000.00 from the defendant for the purchase of the judgments and claims mentioned in the bill. (See answer to 2nd interrogatory.)

He is subsequently cross-examined as to the other supposed advances, for the purchase of omnibuses, &c., &c., for other objects connected with the road, but he is equally explicit in denying them all. (See answers to interrogatories 195 to 203.) A foundation is laid in these interrogatories for contradicting him, but no attempt is made to do it.

Hay is not examined on the subject, nor is any other witness introduced. I am satisfied, therefore, upon the evidence, that the $5,000.00 was all that French received from Hay.

2d. With regard to the second inquiry, the evidence fails to
148 shew that the judgments were ever collected by legal process, or that any money was paid upon them by the company. The complainant relies upon the fact that they were entered "satisfied," and upon general statements made by Joseph B. Stewart in another cause, and by Hay himself, as to the satisfaction of these claims, and the realization of Hay's outlays and investments on the road.

But French expressly disclaims all personal knowledge of the manner in which the judgments were satisfied, and does not p'*ossess* to know, even by hearsay, that any money was paid by the company on the judgments. (See his answers to cross-interrogatories 35, 85, 86, 92, 94, & 96.)

On the other hand, Jos. B. Stewart, who was attorney of Hay, and who was concerned in the organization of the new company,
149 shews, in his deposition, in what manner Hay realized any money from the railroad. Stewart, as the newly-appointed trustee in the place of Lennox, made sale of the road. It was bought in by Hay for $12,500.00. A new company was then formed and stock issued, of which a certain amount went to Hay. It is not clearly stated in this case, but it appears in the deposition made by Stewart in the case of The Alex. & Wash. R. R. Co. vs. The Wash., Alex. & G. town R. R. Co., which has been made an exhibit in this cause, by consent, that in apportioning the stock of the new company, Hay's judgments were the basis of the allotment of stock to him.

Stewart, in his said deposition, in stating the am't expended on the road, says the whole am't "is near $600,000, including the extinguishment of all the judgments of record, in treating them at their par
150 value with interest, as entering into the cost of the stock of the road, as in the organization of the new company it was understood and agreed that said judgments, the decree in favor of Fowle, Snowden & Co., and a deed of trust in favor of same, and the $30,000.00 principal bonds were to be deemed as a charge and credit to the parties,

and thereby extinguished, which was a conventional arrangement between Alexander Hay and Joseph Thornton in their formation of the organization."

It seems further, from Exhibits 2 & 3 with the amended bill in the case referred to, and made a part of this case, by consent, that this arrangement was made in advance of the sale by J. B. Stewart, trustee. As Stewart states in his deposition before me, he caused the judgments to be entered satisfied after this, considering that Hay had no
151 further interests in the road to protect.

He further testifies that Hay sold this stock to himself, and, by assignment, to one Martin, for the nominal sum of $56,000.00; but subject to some claims which Hay assumed, the am't of which is not given.

French, in his deposition, states the price at $70,000.00; but his testimony is only hearsay.

The result is that Hay realized nothing on the judgments directly, that is, by collection or payment; but indirectly derived benefit from his apparent ownership of them by procuring stock in the new company, founded on them, and proportioned to their amount, and by converting this stock into money.

How far this entitles the complainant to the relief prayed by him, is a question for the court and not the auditor.

152 Assuming him to be entitled to relief, he is not understood to claim, or to be entitled to claim, any account for more than the actual amount due on the judgments, no matter what benefit Hay may have derived from them. What French claims is simply the judgments; and though Hay had sold his stock for $100,000.00, he could not ask for more than to be paid the judgments.

In the sense already stated, the judgments were realized by Hay when his stock was sold. The date of this does not appear; but in a deposition of Hay's made in another case, and made an exhibit in this with French's deposition, he states that it was after the extended charter was obtained in 1863, and after considerable progress had been made towards the completion of the bridge. I assume it, subject to
153 correction, to have been at the end of 1864.

The amount of the judgments, with interest to that date, would be what Hay realized on them, provided, as appears to be the case, the sale of his stock produced that much.

Schedule A. herewith returned, exhibits the amount.

(Signed) W. S. COX, *Aud'r.*

154 SCHEDULE A.

*Exhibit A, filed with the original bill.*

LIST OF JUDGMENTS.

| | | | |
|---|---|---|---|
| 1. Thomas W. Wasson & Co.: | | | |
| Principal | 6,706 70 | | |
| Int. on $1,218.01, fr. Feb. 5, '57, to Jan. 1, '65 | 577 51 | | |
| " 1,223.98, " Mar. 5, " " | 574 06 | | |
| " 1,229.95, " Apr. 5, " " | 370 77 | | |
| 1,235.92, " July 8, " " | 554 47 | | |
| 1,241.89, " " 29, " " | 552 84 | | |
| 556.95, " Aug. 5, " " | 247 10 | | |
| Costs | 10 42 | | |
| | | | 9,793 87 |
| 2. Alexander Hay, (assig. of F. H. Smith:) | | | |
| Principal | 1,000 | | |
| Int. fr. Sept. 8th, '59, to Jan. 1, '65 | 328 66 | | |
| Costs | 6 50 | | |
| | | | 1,335 16 |

| | | |
|---|---|---|
| 3. Alexander Hay, (assignee of Anderson:) | | |
| Principal | 16,607 87 | |
| Int. fr. Mar. 4, '57, to Jan. 1, 65 | 7,729 46 | |
| Costs | 6 50 | |
| | | 24,343 83 |
| 4. Alexander Hay, (assignee R. Archer & Co.:) | | |
| Principal | 2,290 04 | |
| Int. on $534.42, fr. Jan. 2d, '56, to Jan. 1, '65 | 288 58 | |
| " 378.27, " Apr. 1, " " | 198 59 | |
| " 536.18, " July 23, " " | 322 30 | |
| " 451.93, " Sept. 7, " " | 229 89 | |
| " 389.20, " Oct. 4, " " | 192 46 | |
| Costs | 6 50 | |
| | | 3,528 36 |
| 5. Morris & Tanner: | | |
| Princ'p'l | 437 17 | |
| Int. fr. Mar. 7, '56, to Jan. 1, '65 | 231 12 | |
| Costs | 7 65 | |
| | | 675 94 |
| | | 39,677 16 |

(Signed) W. S. COX, *Aud'r.*

155 *Schedule A.—List of judgments (cont'd.)*

| | $ c'ts. | $ c'ts. |
|---|---|---|
| Am't forward | | 39,677 16 |
| 6. Morris & Tanner: | | |
| Principal | 2,410 87 | |
| Int. on $1,205.43, fr. Feb. 6, '56, to Jan. 1, '65 | 643 67 | |
| " " 1,205.44, " June 6, " " " " | 619 96 | |
| Costs | 7 65 | |
| | | 3,682 16 |
| 7. T. W. Wasson & Co.: | | |
| Principal | 1,243 64 | |
| Int. on $1,241.89, fr. Apr. 27, '57, to Jan. 1, '65 | 571 88 | |
| | 9 64 | |
| | | 1,825 16 |
| | | 45.184 48 |

(Signed) W. S. COX, *Aud'r.*

156 *Cross-examination of J. S. French, and exhibits, before auditor' April 28th, 1870.—Filed June 27, 1870.*

FRENCH *vs.* HAY. } No. 1337, eq. doc. 9.

The parties appeared, with Mr. J. B. Stewart for defendant, and Mr. F. B. Stanton for plaintiff. Their counsel and defendant proposes to cross-examine the plaintiff, as a witness, he having heretofore been examined as a witness on his own behalf, pending a notice for his oral examination, under the rules of this court, which was served on the 23d day of June, 1869. The examination was had six days thereafter, viz, June 29th, no opportunity to cross-examine being afforded. The complainant's solicitor says, this question having been presented to the court, and the court having decided that the deposition was regularly taken upon interrogatories which were duly served on the defendant, and the defendant having failed or refused to file cross-interrogatories, the complainant now denies the propriety of calling this a cross-examination, but is ready to answer any and all questions which may be

considered pertinent to the matter referred to the auditor, and the complainant submits to the judgment of the auditor without question.

The defendant by his solicitor replies, that the motion made to the court was a motion to strike out the entire deposition, and not as to the right to cross-examine.

After discussion, the plaintiff offers to answer any question founded upon his deposition, in order to avoid further delay.

1st interrogatory. Mr. French, are you not the plaintiff in this case?

Answer. I am.

2d interrogatory. Please look at the paper now shown you and say whether it is your examination-in-chief in this cause.

Answer. I think it is.

3d interrogatory. How long were you engaged in going through that examination, and giving said deposition?

157 Answer. I don't remember. I attended before the commissioner when he was at leisure, at different times.

4th interrogatory. How many different times were you before the commissioner?

Answer. I don't remember—but several times; sometimes he had to go to court, and would at some other time continue it.

5th interrogatory. During how many days did your examination continue?

Answer. I don't remember.

6th interrogatory. Was it consecutive days?

Answer. That I don't remember; I rather think not; at times it was at intervals of, I think, one or two days.

7th interrogatory. Was not your whole examination taken in one day?

Answer. I think not.

8th interrogatory. Do you or not know that your examination was not taken all on one day?

Answer. I do not know what this particular commissioner did; I know I was several days getting up the information to answer the interrogatories?

9th interrogatory. For what purpose were the adjournments which you have spoken of by the commissioner made during your examination?

Answer. I don't remember.

10th interrogatory. By the caption of your deposition, as taken, it is certified that your full examination was had between the hours of 6 a. m. and 6 p. m. on the 29th day of June, 1869. Please state if that is correct.

Answer. I suppose the true meaning was, it was completed at that time, if stated so by the commissioner.

11th interrogatory. But do you not mean to say that the whole deposition was taken and completed on the 29th day of June, 1869?

Answer. I do not. It took several days to prepare the interrogatories.

12th interrogatory. Were the[se] answers all written out by the commissioner?

Answer. I do [n't] remember.

13th interrogatory. Were the answers all written out in the presence of the commissioner?

Answer. Well, that I don't remember.

14th interrogatory. Are you acquainted with the handwriting of the commissioner?

Answer. Well, I can't say that I am, but have taken numer-

158 ous depositions before the commissioner in other cases. When he would get tired he would have a friend to aid him.

15th interrogatory. Are you not able to state whether or not the commissioner wrote out your answers when you, as plaintiff, gave your deposition on your own behalf?

Answer. I am not. I prepared my interrogatories, and when he asked me an interrogatory I read my answer, and, I think, gave him a written answer. This I don't remember, but think it probable. I see none of them in my handwriting; they were written by somebody else.

16th interrogatory. If not written by commissioner, do you know by whom you[r] answers were written?

Answer. I do not.

17th interrogatory. Were your answers all written in your presence?

Answer. I don't remember.

18th interrogatory. Now please look at your deposition, and state in whose handwriting the several interrogatories are.

Answer. I can't say positively in whose handwriting the answers are. I am not very familiar with Smith's handwriting. As far as 15 it seems to be in one handwriting, and is Smith's, and after that it seems to be a different handwriting.

19th interrogatory. Was the commissioner all the time present when your answers were being written out by parties other than himself?

Answer. I don't remember.

Defendant now rests the examination, for the purpose of submitting a motion to strike out and suppress the whole deposition, on the ground of irregularity in taking the same, for reasons and upon information obtained from the plaintiff in his cross-examination now pending, and requesting the auditor to certify and submit the question to the court, the defendant to make a proper motion in that behalf.

Adjourned until to-morrow, April 29, Friday, at 1 p. m.

FRENCH *vs.* HAY. } No. 1337, eq. doc. 9.

JAMES S. FRENCH was examined, as follows, for the complainant, viz:

1st interrogatory. State whether or not the facts stated in your deposition, now on file in this cause, as to the matters pertinent to
159 this inquiry, were stated by you after full examination; whether or not they were regularly sworn to before the commissioner; and whether or not they *were* [are] true.

(Objected to by Mr. Stewart.)

Answer. The facts were stated by me after full examination, before the commissioner, and sworn to before him. They are true, and are sustained by exhibits accompanying the deposition, obtained with great labor from the records in various cases in which the defendant appears, either by answer or by affidavit; and also his attorney and agent, Jos. B. Stewart, either by answer, affidavit, or deposition; and also from the record of the clerk's office in Alexandria County, Virginia.

(Answer excepted to as *accumulation* and immaterial.)

2d interrogatory. Did or did not the defendant Hay ever advance to you any greater sum than $5,000 for the purchase of the judgments mentioned in the bill?

Answer. He did not. This answer is corroborated by Hay's exhibits Nos. 1, 2, & 3, letters written by complainant to him, before a contract was made, and to induce him to make the contract, in which it was stated that about $5,000 was all that was required over and above the settlement of the Washington City debt and turnpike debt, and also

by complainant's Exhibit No. 1, being a letter from Hay enclosing said amount.

(Mr. Stewart excepts to answer, as argumen'tive and immaterial.)

3d interrogatory. What was that contract of which you speak?

Answer. It was an agreement on the part of Hay to furnish the necessary means to buy up and consolidate the debts of the Alexandria and Washington R. R. Company, which were to be assigned to and held by him, the road remaining bound for them, so as to give time to carry out the enterprise; for such advances he was to be remunerated over and above the payment of the sums advanced, by receiving such a proportion of stock in the company as might be agreed upon between us.

4th interrogatory. Was that contract written or verbal?

Answer. Verbal; we were on terms of great intimacy.

5th interrogatory. Was it or not in pursuance of this contract that the aforesaid sum of $5,000 was advanced?

Answer. It was.

6th interrogatory. Did or did not Mr. Hay agree, in the same contract, to take up all the debts of the Alexandria and Washington R. R. Co., in the same way?

Answer. He was to settle or consolidate them so as to control them and hold them, and this in any way he could.

7th interrogatory. Did or did not Mr. Hay comply with the
160 agreement. And if you say not, then state what was done between you.

Answer. He did only in part, by advancing $5,000, less the discount, which was expended, as shown in Hay's Exhibit No. 1, being a letter from me to him setting forth how it was expended, and corroborated by my Exhibit No. 2 accompanying my deposition. After that Hay declined to carry out the agreement and sold to me all the claims which had been assigned to him, as shown by two exhibits, B & C, with the original bill.

8th interrogatory. There was one judgment or claim for about $20,000 against the R. R. Company due to one Anderson; please state whether or not that was bought and paid for with the money advanced by Hay, or otherwise, and how.

Answer. It was not, but was purchased some time before the advance was made by Hay. See my Exhibit 3, and latter part of Exhibit 6, to my deposition. (Objected to by Mr. Stewart, answer excepted to, and further, to witness using his existing deposition by which to produce another.)

9th interrogatory. How, and why was that judgment assigned to Mr. Hay? State all the facts.

(Defendant requires the production of the assignment before witness testifies in regard to it.)

Answer. I produce the assignment in Exhibits Nos. 3 & 6, to my deposition, being certified copies from originals in the clerk's office at Alexandria. (Mr. Stewart objects to the copies as evidence.)

The judgment was assigned to Mr. Hay because I wished all the judgments to stand in his name, as he had agreed to buy them up and consolidate them, and this he immediately re-assigned to me. (Mr. Stewart calls for the production of the original assignment to Mr. Hay.)

10th interrogatory. State why Mr. Hay re-assigned this judgment to you, and upon what consideration.

Answer. It was re-assigned to me after being assigned to him, as shown in Exhibits Nos. 3 & 6 to my deposition on file, showing that the debt belonged to me and not to him, without any consideration, I

having purchased the debt myself and assigned it to him in the first instance or purchased it in his name, and he re-assigned it to me, in the event of accident if we lived, and no trouble was ever apprehended upon settlement, when he carried out his agreement.

(The defendant excepts to the foregoing answer, and repeats the call for the original assignment.)

161 11th interrogatory. With those means was the judgment in question purchased by you?

Answer. With my own, with lands which I transferred in payment thereof, my wife relinquishing her right of dower therein at my instance.

12th interrogatory. Did or did not Hay collect the judgments mentioned in your original bill, or any part of them? State all you know on the subject.

Answer. He did, as shown by the records, collect and appropriate them to his own use. Several of these judgments are marked "satisfied by order of Alexander Hay, in the circuit court of Alexandria County, Virginia," as shown in Exhibit A. Hay in his answer, in the case of the Alexandria & Washington R. R. Co. vs. The Washington, Alexandria and Georgetown R. R. Co., filed as an exhibit with my deposition, lays claim to all these judgments, and says that he appointed Joseph B. Stewart his attorney to look after them, and he claims, I think, that they were paid to him, in his answer; of this I am not certain, but in his affidavit filed in the U. S. circuit court for Virginia, and made an exhibit with my deposition, he admits the payment of them to him by the Washington, Alexandria & Georgetown R. R. Company, and payment of the same to the said Hay is stated by Joseph B. Stewart, his attorney and agent, in his answer and deposition both filed in the case of the Alexandria and Washington R. R. Company vs. The Washington, Alexandria and Georgetown R. R. Company and others, which has just been decided in the supreme court of appeals in Virginia; and the said Stewart also states the payment of the same in an affidavit filed by him in the U. S. circuit court of Virginia, in the case of Horatio Riddle et al. against French, all of which are made exhibits by me in my deposition on file in this case, and the particular clauses or paragraphs in said exhibits referred to are specially pointed out in my answer to the 30th interrogatory filed with my deposition. The said Joseph B. Stewart acting as the agent of Hay, did by virtue of these judgments seize upon and sell the old iron of the railroad, as it was removed by the Government in their relaying of the track; and according to the deposition of Oscar A. Stevens, taken in the case of the Alexandria and Washington R. R. Company vs. The Washington, Alexandria and Georgetown R. R. Co., made an exhibit by me in my deposition, he did sell the same for about $12,000, no part of which has ever been accounted for; and further, to show that these judgments were appropriated by

162 Mr. Hay, the said Joseph B. Stewart states in his deposition herein before referred to, that these judgments formed a basis on which the Washington, Alexandria and Georgetown R. R. Company was organized, and that they enured to the benefit of the said Hay, he obtaining full valuation for them in the organization of said company. The said Hay, in his answer to my original bill, asserts positively that he never received a dollar or the fraction of a dollar on them, or received any benefit therefor, which caused me to hunt over and laboriously examine the records herein before referred to, which are more fully and particularly pointed out in my answer to the 30th interrogatory in my deposition, in which many other evidences of payment of said judgments to said Hay, are set forth and not herein enumerated.

(Exceptions taken to the foregoing answer by Mr. Stewart.)

13th interrogatory. Did or not Mr. Hay advance to you any money for the purchase of omnibus'es, as stated in his answer to the original bill, and were or were not any omnibus'es obtained?

Answer. He did not, and no omnibus'es were bought that I know of or remember by himself or myself.

April 30th.—Examination resumed.

14th interrogatory. Were or not, all the judgments specified in your "Exhibit A" in the original bill assigned to Hay?

Answer. They were as shown by a certified record from the court, though denied by Hay in his answer and cross-bill.

(Answer excepted to by Mr. Stewart.)

15th interrogatory. Why were not Hay's re-assignments to you recorded when they were made?

Answer. Because I was personally bound for most of the debts of the railroad, and if I appeared as the owner of them, they might be sold, pass into other hands, and prevent the consolidation of the debt under the agreement with Hay. These papers were in my pocket book and carried with me when I went after my family in North Carolina in May, 1861, expecting to be back in a few weeks, but could not return until the war was over. But for this they would have been recorded before they were. They were recorded or lodged in the clerk's office as soon as I could return, which was in 1865.

163 (Answer excepted to by Mr. Stewart.)

16th interrogatory. In the verbal agreement between yourself and Hay, in pursuance of which he advanced the ($5,000.00) five thousand dollars, was the *agreement* [arrangement] solely for his benefit, or were you to be interested in the purchase of the judgments?

Answer. The agreement was for the mutual benefit of both, the matter to be arranged in a final settlement between us.

(The printed copy of the record in Washington, Alexandria and Georgetown R. R. Co. vs. The Mayor, &c., of Corporation of Washington, is by agreement of counsel admitted in evidence, marked H, ("W. S. C., aud'r,") and the plaintiff here rests his examination-in-chief.)

Cross-examination:

1st interrogatory. The counsel for the defence calls [up] on the plaintiff for the production of the original papers and assignments referred to in his examination-in-chief.

Answer. With the exception of the power of attorney from Hay to French, which is here produced, marked "original power of attorney," (W. S. C., aud'r,) a copy of which is filed as one of the exhibits with the original bill, the original assignments of the claims by Hay was filed before Commissioner Yeaton in the suit of the Alexandria & Washington R. R. Co. vs. The Washington, Alexandria & Georgetown R. R. Co., et al., in Alexandria County, Va., circuit court, and will be found with the original papers in that case. The other original assignments are filed in the clerk's office at Alexandria, Virginia. I cannot produce them unless the court will allow me to do so. There are certified copies of all these papers under the seal of the court of the State filed in this case.

(Defendant demands the original papers for reasons other than appear on the face of the copies.)

2nd interrogatory. Why was not the power of attorney which you have just produced, from Hay to yourself, recorded at the same time

the assignments were recorded, as stated in your answer to 14th interrogatory?

Ans. I do not know whether it was or not, if not recorded, *ed* it was because I did not deem it *proper* [important] to do so. The debts referred to in said assignment had been collected and appropriated by Mr. Hay, and the road sold by Jos. B. Stuart as substituted trustee, and purchased by Alexander Hay, and there was nothing I could do under the power of attorney. A copy of this power of attorney was made an exhibit in the suit of the Alexandria & Washington R. R. Co. vs. The Washington, Alexandria & Georgetown R. R. Co., so often referred to.

164 3rd interrogatory. The road being sold and the judgments being settled or collected, as you have stated, as far back as 1862, what object had you in view in recording *the* assignments of the judgments you have spoken of any more than the power of attorney which accompanied those *judgments* [assignments?]

Answer. I did not state when they were settled, *for* [because] I don't know. My object in recording these assignments was to show that they belonged to me and not to Hay.

4th interrogatory. Please look at the power of attorney [that] you have produced, and say in whose handwriting it is down to the signature of "Alexander Hay, seal?"

Answer. I received it as written by Alexander Hay, and believe it was written by him. It is his handwriting as far as I can judge and know.

5th interrogatory. Where did you receive that power of attorney?

Answer. I don't remember whether I got it by mail or whether he handed it to me.

6th interrogatory. Did you get the assignment of the judgement you have spoken of, and which appears as "Exhibit C" in your bill, at the same time you received said power of attorney?

Answer. I did to the best of my recollection and kept them together, regarding them as one paper.

7th interrogatory. Do you remember in whose handwriting the assignment you have spoken of, is, viz, Exhibit C in your bill?

Answer. I cannot speak positively, not having seen it for some time, but I am very confident that it is in Hay's handwriting.

8th interrogatory. Is the whole of said assignment or only a part in Hay's handwriting?

Answer. I think the whole of it; but the assignment will speak for itself. I have stated where it can be found. I have not seen it since it was filled in, I think 1866, in the case referred to.

9th interrogatory. Did you not send to Hay the said Exhibit C in your own handwriting from the words "for and in consideration [of] $5,000.00 down to the words his individual property," and did not Hay add these *to the* words "upon his payment to me of the above-named sum of $5,000.00 with interest from this date?"

Answer. I have no recollection whatever of any such occur-
165 'ance, not the slightest, nor do I remember whether I wrote any part of it or not, or anything about it, except the receipt of the assignment.

10th interrogatory. Did you not write out and send to Mr. Hay, to be copied by him, the said power of attorney, the same to be returned to you when executed?

Answer. I do not remember; if I did there was no reason why he should not have signed it in my handwriting, as well as if it had been

in his own. There is no reason why I would have asked him to copy it unless it had been badly written and not intelligible.

11th interrogatory. What is the date of the said assignment you have referred to, viz, Exhibit C in your bill?

Answer. The date is 24th of August, 1860.

12th interrogatory. What is the date of the said power of attorney you said you received at the same time you did the said assignment?

Answer. August 24th, 1860.

13th interrogatory. It is of the same date with the assignment, is is [t] not?

Answer. They are both the same date.

14th interrogatory. Did you acquire or do you claim any other title to said judgments, than by virtue of said assignments Exhibit C?

Answer. It was under this assignment I claimed the judgments specified in Hay's Exhibit No. 1, being my letter to him of September 9th, 1859. I regard the assignment as conveying to me all interest which Hay had in the Alexandria & Washington Railroad. The large debt of Anderson's had been specially assigned before, but all Hay's interest was covered by this assignment.

15th interrogatory. Please be so good as to answer the question direct whether you acquired or claimed any other title to said judgments than by virtue of said assignments C?

Answer. All the judgments specified in Hay's Exhibit No. (1) one, I claim no title to except under said Exhibit C in my bill, but said assignment likewise covers all Hay's interest in claims assigned to and held by him in said road, and this in addition to the other assignments from Hay to me.

16th interrogatory. Do you claim that all Hay's interest in said judgments passed by virtue of said Exhibit C, upon the delivery of the same to you by Hay on the 25[4]th day of August, 1860?

166 Answer. The judgments belonged to me on my paying [Hay] the sum of $5,000, with interest from that date.

17th interrogatory. Could the judgments belong to you before you paid Hay the said $500?

Answer. I had such an interest in them as would enable me to appropriate them to myself on paying said sum with interest.

18th interrogatory. If you acquired the right and title in and to said judgments by virtue of said assignment Exhibit C, and Hay thereby parted with all interest therein, why was it necessary that Hay, at the same time and date, should execute to you the said power of attorney authorizing you to act in the future in his name?

Answer. I do not know that is was necessary; it gave me the absolute control of said judgments, to settle them as I might deem proper, while at the same time the judgments stood in the name of Hay, the power of attorney being irrevocable because coupled with an interest.

19th interrogato'y. As I do not perceive any irrevocable feature in said power of attorney or any interest specified therein as coupled with said power, will you please specify what language in said power either conferred a specific interest or made it irrevocable, and *now* call my attention to it as I now read it over to you?

(Counsel reads power of attorney to witness.)

Answer. The interpretation of the power of attorney I leave to the court.

20th interrogatory. Did you ever pay to said Hay the said $5,000, stipulated in said Exhibit C?

Answer. I did not.

21st interrogatory. Were not the said judgments to belong to said Hay until said $5,000 was paid, and was not that the reason why it was necessary that said Hay should and did execute to you said power of attorney to act for him?

Answer. The interpretation of these papers I must leave to the court; I do not recollect any particular circumstances connected with them.

22nd interrogatory. Can you not give some reasen for or explanation why you should be acting under a power of attorney from said Hay, if he had ceased to be the owner of said judgments and claims?

Answer. I suppose it was because I did not wish the said judgments to appear in my name; that is the only thing which occurs to me.

Case here adjourned to Tuesday, 10th of May, at 10 a. m.

167 May 10th, 1870.—Cross-examination resumed pursuant to adjournment.

23rd question. Are you now prepared to produce the several original papers referred to in your examination-in-chief, and especially the original of your Exhibit C, filed with your bill?

Answer. I am not; I have no control over the papers. I have stated where they were filed, and access can be had to them by any party wishing it. I have examined the assignment since the last adjournment, and find it is in my handwriting, signed by Alexander Hay, and witnessed by Thomas Hay.

24th question. Was any portion of said assignment o[i]n the handwriting of Alexander Hay?

Answer. None, with the exception of his signature.

25th question. You perceive, then, that you were mistaken about the said assignment being in the handwriting of said Hay, and that it was written by yourself; are you not equally mistaken about *your*s not having written the power of attorney for Hay to sign, which was executed at the same time of said assignment?

Answer. I did not state positively that the assignment was in Hay's handwriting; my impression was that it was. I had not seen the papers for a long time, but I remembered that the papers were signed by Hay, and regarded that as making it his act; whoever they were written by. As to the power of attorney, I do not remember whether I wrote it or not. I may or may not have written it; I do not remember.

26th question. Now please state precisely who were the parties bound for the payment of the judgments assigned to said Hay, as described in Exhibit C.

Answer. The Alexandria & Washington Railroad Co.

27th question. Were there any other persons or parties bound for the payment of said judgments or claims, besides the Alexandria and Washington Railroad Company; and if so, who?

Answer. The judgments were rendered only against the railroad company upon some of the notes on which these judgments were founded; Lenox was an endorser with myself.

28th question. It appears from your last answer that both James S. French and Walter Lenox were bound for a portion of said judgments; will you please answer directly if you were so bound?

168 Answer. That is a legal question; the papers are on file and will speak for themselves; I refer to Exhibits 2, 3, 4, 5, & *C*, accompanying my deposition taken in interrogations for further explanation.

(Defendant excepts to the foregoing answer, and especially that part of it which proposes to incorporate and blend another deposition in answer to the question now propounded.)

29th question. Were not yourself and said Lennox bound for all the judgments or claims assigned to said Hay, and now claimed by you in your bill of complaint?

Answer. I think not, but the exhibits referred to by me, accompanying my deposition, some one or more of them contains a release from said Hay of all personal liability whatever on my part for any endorsement; certified copies of the originals from the clerk's office, Alexandria County, Va., were filed by me, as above stated.

30th question. Will you please look at Exhibit No. 1, filed with the answer of Hay, and say whether it contains all judgments and claims referred to by you in your bill of complaint as belonging to you?

Answer. It contains only the debts purchased by me with the five thousand dollars advanced by Hay, leaving an unexpended balance in my hands of some four or five hundred dollars. The debt for about $20,000 endorsed by myself and Lennox, therein referred to, formed no part of this purchase, but belonged to me, as heretofore shown in my Exhibits 3 and *C* accompanying my deposition.

(Answer excepted to by Mr. Stewart.)

31st question. Was not said Exhibit No. 1, filed with the answer of Hay, a paper written by yourself to Hay, purporting to give him a correct statement of the judgments and claims against said Alexandria & Washington R. R. Company, which you were having assigned to him? And please look at the original of said Exhibit No. 1, and say in whose handwriting the same is.

Answer. Hay's Exhibit No. 1 is a statement of the debts or judgments purchased for and assigned by me to Hay, a short time after receiving about $5,000 advanced by him for that purpose. The price paid for these debts is a matter of record, and the receipts for which are shown in my Exhibit No. 2. The paper is in my handwriting, and contains a statement of the purchases made by me at that time.

32nd question. Are the statements made in the said Exhibit No. 1, written by you to Hay on the ninth of September, 1859, true and correct?

169 Answer. I believe them to be, and they would be corroborated by Exhibits 2, 3, 4, 5, and 6, heretofore filed by me, which are not now among the papers, but which have been during a previous part of this examination.

33rd question. Please look again at said Exhibit No. 1, written by yourself, and state whether it does not show that you were bound personally for all the judgments and debts mentioned in your bill, or that were assigned to Hay.

Answer. In the exhibit referred to I used the term, "I am personally bound" for all the above matters; the debts or notes upon which the judgments were rendered will show whether I was personally bound on all them or not. In Hay's reply to this letter, he released me personally from all the debts for which I was bound, which release and a specification of the debts or judgments are set forth in some of my Exhibits 2, 3, 4, 5, and 6, referred to by me.

(Answer excepted to.)

34th question. Will you be so good as to answer my question as put, whether the statement Exhibit No. 1, written by you to Hay, does not show that you were personally bound for the whole of said debts and judgments therein mentioned?

Answer. The exhibit of Hay, No. 1, together with his reply thereto made, on exhibit by me, will show clearly this transaction. It is one of the exhibits from 2 to 6, so often heretofore referred to.

(Answer excepted to.)

Question. Last question repeated.

Answer. Last answer repeated.

(Counsel for defence insists on answer, and appeals to the auditor.

Before the auditor decides, the answer is modified by plaintiff, as follows:

The paper will speak for itself, and its interpretation, with Hay's reply thereto, is a matter for the court to determine.

This is accepted by defence as sufficient answer.)

35th question. You have stated in your answer to the 20th cross-interrogation that you never paid to said Hay the $5,000, or any part of it, mentioned as the consideration for the purchase of the judgments and claims in your Exhibit C. Will you now state whether the Alexandria & Washington R. R. Company ever paid said judgments or claims to said Hay, or any part of the same to him?

Answer. Those judgments were appropriated by Mr. Hay, as his own property, and collected by him; how he collected them, and of
170 whom, I do not know; but he says they were paid him by the Alexandria, Washington and Georgetown R. R. Company, and I believe were settled in some arrangement with said company.

(Answer excepted to as not responsive to the question.)

36th question. The question you were desired to answer is, whether the Alexandria & Washington R. R. Company ever paid to Hay those judgments, or any part of the same, and not what disposition Hay made of the judgments on his own account.

Answer. When these judgments and claims were appropriated by Hay, and claimed as his own, I was absent in the South, and remained absent for several years. When I returned I found they had been settled. Some of them are marked "satisfied" on the docket, and in answers of Alexander Hay and Joseph B. Stewart, heretofore referred to, and in affidavits filed by these gentlemen, filed in the United States district court for Va., all of which are made exhibits in this case, the settlement of these judgments is conceded or admitted. How these settlements were made I do not of my own knowledge know, but refer for proof to the different exhibits in my deposition.

(Answer excepted to as evasive and not responsive to the question.)

37th question. Will you not answer the question as put, whether the Alexandria & Washington R. R. Company ever paid to Alexander Hay the said judgments or claims, or any part of the same?

Answer. It did not prior to May, 1861, when I left Alexandria, nor has it since 1865, when I returned to Alexandria.

38th question. What position did you occupy in said Alexandria & Washington R. R. Company at the time of its formation, and if any, when did you cease to occupy such position?

Answer. When the company was organized I was elected its president, and claim to be still its president.

39th question. If you were president of said company, do you not know, and will you not state whether said company ever paid said judgments and claims to said Hay, or any part of them?

Answer. During my absence from Alexandria, the Alexandria & Washington Railroad was illegally seized upon and sold, and said company claim to have been extinguished. What occurred during my absence I do not know except upon the representations of others, or as made known in the records of the case of The Alexandria & Washington R. R. Company vs. The Washington, Alexandria & Georgetown R. R. Company.

Question. You have spoken frequently of your absence from Alexandria from May, 1861, to some time in the year 1865; please state what caused you to be absent during that time.

171 Answer. In the spring of 1861 my wife and children went from Alexandria to North Carolina to visit some relations. When the city of Alexandria was occupied by the U. S. troops, I left Alexandria to go after my family, expecting to return in a few weeks, and left E. S. Boynton, the superintendent of the Alexandria & Washington Railroad, in charge of my house, saying to him I would soon be back. In corroboration of this statement, I refer to the deposition of said Boynton taken at the instance of the defendants in th' case of the Alexandria & Washington R. R. Company.

Question. At what time did your family go to North Carolina?

Answer. I do not know exactly, but I think early in April, 1861.

Question. Was not Alexandria at that time occupied by the rebel troops, that is, April 1st, 1861?

Answer. I do not know that there was any organization there except the volunteer companies which belonged to the town. There was no concentration of troops there at that time that I remember, nor I think until some times afterwards.

Question. At what time did the rebel troops concentrate in Alexandria?

Answer. I do not remember, but I think only a short time before the city was occupied by U. S. troops, which I think was the 23rd of May, 1861.

Question. Who accompanied your wife and children from Alexandria on their journey to North Carolina?

Answer. I think they had no escort; I merely placed them on the train to be met in Carolina by their relations.

Question. Did not your wife and family go with or at the same time *with* the wife and family of John B. Floyd, late Sec. of War of U. S., went South?

Answer. They did not, that ever I heard of.

Question. Was it not apparent at the time your family left that Alexandria would become the theatre of military operations and occupations?

Answer. I can't say that it was; there was great trouble and excitement throughout the country, but we hoped it would blow over, and be settled without actual hostilities.

Question. Was not Alexandria occupied by a large rebel force before you left, as you state, for your family?

Answer. I left to join my family the morning the city was occupied by the U. S. troops, fearing if I did not then leave I should be unable to get away. There were rebel troops in Alexandria several days previous to this, and they left the city the same morning it was occupied by the Federal troops.

172 Question. How many rebel troops do you suppose left Alexandria the same day you did?

Answer. I don't know. My recollection is that there was not more than a company or two, independent of the volunteer companies of the city; and exactly when they left, or what route they went, I don't know.

Question. Had you not, before you left, as stated, for your family, declared your purpose to remain in the then recently formed confederacy, and did you not send your family South in anticipation of that peurpose?

Answer. I had not; but when I left Alexandria expected soon to return. I do not know that any confederacy was formed at that time, nor do I recollect when it was formed. I had opposed secession, and used all my influence to prevent it.

Question. Did you not, before you left, declare it to be your conviction that the Union was, or would be dissolved, and that it was better that the Northern States should peaceably acquiesce in such fixed and inevitable result?

Answer. What my political opinions were at any particular time I do not know; they were grounded [governed] by passing events. I thought then, as I think now, that it would have been better to have adjusted and compromised the matter than to encounter so much expense and loss of life. Most of us hoped that such would be the case.

Question. Did you not, before you left Alexandria to go South, declare yourself then a citizen of the so-called confederacy, and request the defendant Hay to assign to you certain patents, so that you could protect and use them within that confederacy?

Answer. I do not think I did. My impression is that Virginia did not secede until the day before I lett Alexandria. I owned some patents jointly with Hay, and wished him to assign me my interest in them, so that, in the event of a separation, I might be able to turn them to account.

Question. If you intended to return to Alexandria, what use could you make of such assignments in the so-called Confederate States unless you intended to reside there, so as to use them?

Answer. I was entitled to an assignment of my interest. I could not use it unless it was assigned to me; otherwise I had no title whatever; but with evidence of my title I could use it anywhere if I could find a purchaser or put it into operation.

Adjourned until 10 a. m., May 11th, 1870.

173 MAY 11TH, 1870.—Cross-examination resumed pursuant to adjournment.

50th question. When you requested said Hay to make the assignment of said patents to you, did you not allege as a special reason that he, as a citizen of the Northern States, could not hold or be protected in possession of said patents in his name, while you, as a citizen of the so-called States and government, could and would be protected in such property?

(Question excepted to by complainant's counsel.)

Answer. I do not remember the particular reasons assigned by me to induce Mr. Hay to assign to me that which belonged to me. My letters, I understand, have been made exhibits; they will speak for themselves.

(Answer excepted to.)

Question. Last *answer* [question] repeated.

Answer. I refer to the letters made exhibits by Mr. Hay in this case, for the reasons assigned by me.

51st question. You say that the letters written by you to Hay contain the reasons why you desired the assignments of the patents, referred to in your deposition, to be made. Was Hay jointly interested with you in said patents, and did he not advance the means to procure the issuing of the same?

(Question objected to, as being irrevelant to this case.)

Answer. We were jointly interested, but he did not, to my recollection, advance the means.

52d question. Will you now please look at Hay's exhibits, Nos. 7, 8, 9, 10, and 11, and say in whose handwritings, the originals of which are now shown you, and say whether the exhibits so filed are true copies of the originals?

Answer. I have examined the originals, and I find them, viz; No. 7, dated April 20th; No. 8, April, 27th, 1861; No. 9, May 9th, 1861; No. 10, May 11th; No. 11, May 17th, 1861, to be in my handwriting. Nos. 7 and 10, though the year is not named in their caption, I have no doubt were written in 1861. I have compared the copies filed as exhibits, and find them to be correct.

174 53d question. Did you address the said letters (Exhibits No. 7, 8, 9, 10, and 11) to the defendant Hay at or about the time of their date?

Answer. I suppose I did; I have no doubt I did.

54th question. You have stated that you went South on the 23d of May, 1861, from Alexandria. Your last letter, Exhibit No. 11, was addressed to Hay on the 17th of May, just five days before you left. Did you, at the date of that letter, intend going to North Carolina for your family?

Answer. I did not. I still hoped that hostilities would be averted, for at the date of that letter Virginia had not seceeded. I did not know, an hour before I left the town, that I would leave it. I left it as the U. S. troops entered, fearing otherwise I should be separated from my family, and carried with me no baggage except a small carpet-bag in my hand.

55th question. In your letter to Hay of the 17th of May, you say, in reference to the assignment of the patents, "Please let me hear from you at once, as I want to go to Richmond and Petersburg." What was your object in going to those places at that time?

Answer. I really don't remember. It has been some nine years since, and the particular circumstances or opinions I entertained then, and the objects I had in view, I do not remember. The letters on file are the best index.

56th question. Besides the patents and carpet-bag you have spoken of, did you take anything else with you when you went South?

(Question excepted [to] by complainant's counsel, for want of revelancy.)

Answer. I carried with me no patents, and have never seen any of those referred to. I carried a pocket-book or two, with some private papers, and probably a shirt or two, leaving my private papers, books, wardrobe of self and family, excepting such clothes as they had with them, in my house.

57th question. Did you remove and take with you the rolling-stock of the Alexandria and Washington R. R. Co.?

(This question excepted to for irrevelancy.)

Answer. I did not, and did not see any of it until the fall of that year, or winter of that year. A few days before I left Alexandria, having no depot to shelter the rolling-stock of the company, the cars standing in the street, I was afraid, if the town was occupied, they would be destroyed, and, therefore, with a view to their safety, I directed

175 them to be removed out of town, for a short distance, on the Orange and Alexandria Railroad. This was done at my order, and I saw no more of them until time spoken of, viz, the fall or winter of that year.

58th question. Were there any better facilities for sheltering the said rolling-stock, a few miles out on the Orange and Alexandria Railroad, than in the city of Alexandria?

Answer. There was not; there was no shelter whatever, but I thought it would be less liable to be burned or destroyed by removing it out of town. The Orange and Manassas Railroad did the same thing, that is, remove as much of their stock as they could.

59th question. Who did you suppose wished to burn or destroy the said rolling-stock, if left at the depot of the company in Alexandria?

(Question objected to by plaintiff.)

Answer. I feared the city, if occupied, might be sacked or burned, in the excitement growing out of hostilities, on the city's being occupied, and this without reference to the attacking party.

59th question. Did you not know, at the time you removed said rolling-stock, that the rebel government needed, and would continue to need, such material; and did you not know that you were placing the said rolling-stock in a position where the rebel authorities could get it?

Answer. The secession of Virginia had not been ratified at that time, and I had no reference whatever, in removing it, to its future use; it was removed merely for safety. The cars were light horse-passenger cars, and the engines were very light; the whole of the rolling-stock unfit for heavy traffic or freight.

60th question. When you left Alexandria, on the 23d of May, 1861, where did you first go to?

Answer. I left Alexandria on foot, and walked most of the way to Fairfax Court-House, riding where I could get a cart, or place in a cart or wagon going in that direction.

61st question. With such means of transportation as you have described, how did you propose to get your wife and children back into Alexandria?

Answer. I proposed nothing, and thought of nothing at the time. My object was to get out of the bustle and excitement.

62d question. Would your wife and children have been any safer
176 in Alexandria than you supposed the rolling-stock of the railroad would be; and did you propose to subject them to any such peril and exposure in the event of the sacking and burning of the town?

Answer. As matters turned out, the city being neither sacked nor burned, the rolling-stock of the railroad would have been safer if not moved; and my family, if they had been in Alexandria, as no other family suffered, I suppose they would not have suffered.

63d question. After leaving Fairfax Court-House where did you next go?

Answer. I went to Richmond, as soon as I could get there.

64th question. Did you go to Montgomery, Alabama, the then seat of the rebel government, after you went to Richmond?

Answer. I did not; I never was in Alabama in my life.

65th question. How long did you remain in Richmond during the time you were absent, between 1861 and 1865?

Answer. At the time that I first reached Richmond, after leaving Alexandria, I remained no longer than I could get away to join my family in North Carolina. I remained with them several months, finding some members of it quite sick. I returned to Richmond in the fall of that year, and brought my family with me. In the spring of 1862 I returned to North Carolina with my family, and remained there until the close of the war.

66th question. Was the rebel government established at Richmond when you returned there with your family, in the fall of 1861?

Answer. I do not know that it was when I returned; but the rebel

government was in operation during the fall of 1861, while I was in Richmond.

67th question. Do you know about what time the first battle of Bull Run was fought, in the year 1861?

Answer. I dislike to plead ignorance to so marked an event, but really I do not remember.

68th question. Was not the rebel government in operation at Richmond at the time that battle was fought?

Answer. I do not know; I remember no incident connected with it; and therefore suppose that when it occurred I must have been absent from Richmond, as none of the circumstances, as the bringing in of the wounded, &c., connected with the battle, are known to or remembered by me.

177 69th question. When in Richmond, after the rebel government was organized there, did you ever apply for any official position or employment under said government, or any of its departments?

Answer. I do not think I ever did; I certainly never held any.

70th question. Did you not apply to said government for the position of commissioner of patents, or some position in its proposed patent-department?

Answer. I certainly never applied for the place of commissioner of patents; nor do I remember to have applied for any in the patent-office. I acted as patent-agent for persons who sought to obtain patents, prepared specifications, had models made, etc., and obtained patents from the confederate government.

71st question. Were you qualified as such attorney or patent-agent. Did you not have to subscribe to an oath or obligation to obey or support the laws of the rebel government?

Answer. I do not remember ever to have qualified, or that any qualifications was necessary, or any oath required, or anything of the kind. If there was it has escaped my remembrance.

(Adjourned until 10 o'clock a. m., May 12th.)

MAY 12TH, 1870.—Cross-examination resumed, pursuant to adjournment.

72d question. Are you acquainted with Allan B. Magruder, formerly a member of the Washington bar?

Answer. I have known such a gentleman, not very intimately.

73d question. Did you meet with said Magruder during your residence in Richmond, after the rebel government was organized at that place; and, if yes, did you not inform him that you desired to get office under the said rebel government, and desire his aid?

Answer. I have no recollection whatever of having seen Mr. Magruder in Richmond; I may or may not. My principal acquaintance with Mr. Magruder, and when, I think, I had more conversation with him than at any other time, was while he was attending to a branch of a railroad case in Alexandria, some two years since, or thereabouts.

178 74th question. In reference to the judgments purchased by Hay against the Alexandria and Washington Railroad Company, and claimed by you under said assignment Exhibit C, you have stated that you never paid nor tendered to said Hay the said $5,000, and that the said Alexandria and Washington Railroad Co., of which you were president, did not pay the same to said Hay.

Will you now please state precisely how you do claim that said Hay received or collected anything on said judgments or claims to which you are entitled as alleged in your bill?

Answer. I claim them as set forth in the exhibits I have already filed, and with additional testimony I expect to introduce.

(Answer excepted to.)

75th question. Please point out what one or more of the exhibits you refer to specifies the exact basis of your said claim against Hay.

Answer. I refer to all of the exhibits as substantiation of it in their connection with each other.

(Answer excepted to.)

76th question. Will you please mention by number or numbers which of the said exhibits specifies and defines the amount of your said claim?

Answer. This would require me to repeat the contents of all the exhibits filed and specially referred to in my deposition, which, as the exhibits speak for themselves, I do not deem necessary.

(Answer excepted to.)

77th question. Where did you obtain the exhibits you refer to?

Answer. Each exhibit referred to states within itself where it can be found, and certified copies are filed in this case accompanying my deposition.

(Answer excepted to.)

78th question. Do you say the exhibits you refer to are all certified, and append' to your deposition?

Answer. They are all filed in this case. All do not accompany the deposition, because some are filed in the original bill.

79th question. Where those filed with the original bill certified copies?

Answer. I cannot say without examining the original bill and exhibits. I now make the examination, and find Exhibit B to be a copy, the handwriting of which is proved by me, and the original has been proved during this cross examination, and is now in the possession of
179 the auditor. Exhibit C is a certified copy from the clerk's office in Alexandria, where the original is filed in the commissioner's report, in the case of The Alexandria and Washington Railroad vs. The Washington, Alexandria and Georgetown Railroad Co. Exhibit A was filed with the original bill, and has been among the papers. Some time ago, while this case was pending before Judge Olin, the papers were mislaid and could not be found for some months. I obtained an order from the court to duplicate the papers, and did so. I have a copy of Exhibit A, certified by the clerk of the Alexandria circuit and county court, containing an abstract of the judgments filed with my original bill, which is a mere duplicate of the original filed with the bill. The copy filed with these papers will be found among them.

80th question. In view of your allusion to papers being lost or taken from the files, I will ask you to state from whence you obtained the exhibits B & C, now produced and inspected by you, in your answer just given?

Answer. I did not say any papers were taken from the files; Judge Olin placed the bundle of papers somewhere that he could not lay his hands on them when wanted, and found them on removing his papers. The original of B I had in my possession, and have filed in my cross-examination here. The original of C, as before stated, was filed with the commissioner in the case of The Alexandria and Washington R. R. Co. against The Alexandria, Washington and Georgetown R. R. Co., and copies of these papers are printed in the record of the railroad case before referred to.

81st question. The question I desire you to answer is, where did you obtain, and from whence did you produce, the said Exhibits B & C, as filed in this cause. Did you not, just a few minutes ago, take them from an envelope in your pocket?

Answer. I did not; I took them from the papers in this case lying on the table, and there I expected to find Exhibit A, but do not as yet find it.

82d question. Will you now please look at the deposition referred to as given by you, containing said certified exhibits, and point out the one or more of them which defines and shows the statement and amount of your claim against said Hay, on account of said judgments and claims?

Answer. The amount of my claim is set forth in Exhibit A. My claim to it is proved by all the exhibits referred to in their connection, the one with the other, so far as they have a bearing directly upon the point at issue.

83d question. The Exhibit A you refer to contains nothing but
180 the statement of judgments and claims against the Alexandria & Washington Railroad Co., yourself and Walter Lennox, which were purchased by and assigned to Hay, and which you claim were afterwards purchased by you; but does not specify any amount of claim. What I desire you to state is the amount you claim of Hay, and what that amount is based upon.

Answer. All the claims referred to in Exhibit A were assigned to him; but all were not purchased by him.

The amount claimed of Hay is all the judgments assigned to him, claimed by him in his answer in the railroad case, and set forth in the different exhibits referred to accompanying my deposition, less the sum of $5,000, with interest, due him from the date of the advance; all of which said judgments were collected and appropriated by said Hay as his own property, as shown in the different exhibits referred to.

84th question. As you have more than once stated that neither the Alexandria & Washington R. R. Company, yourself, nor Lennox, who were obligors in said judgments and claims, never paid Hay the same, or any part of them, will you state from whom and how the said Hay did collect and appropriate the same as stated in your last answer?

Answer. Exactly how they were collected or paid, I do not of myself know. J. B. Stewart, in his deposition in the case of Alexandria and Washington Railroad against The Washington, Alexandria and Georgetown Railroad Co., says these judgments formed the basis in part on which the Wash., Alex. & Georgetown Railroad Co. was organized. For specific details I refer to his deposition, a certified copy of which is filed as an exhibit to my deposition. Hay says, in his answer in the same railroad case, that as soon as he could sell out his interest at a sum sufficient to re-imburse him for all the expenses he had been at, and advances he had made, he did so sell out, and did so re-imburse himself. And in an affidavit filed by Hay in the United States district court of Va., he says he was re-imbursed such claims by the Wash., Alex. & Georgetown R. R. Company. This affidavit was filed in the case of Horatio R. Riddle and others vs. James S. French, and in the same case an affidavit was filed by J. B. Stewart, substantially corroborating the same statement, which is also corroborated by Robert W. Latham, president of the Wash., Alex. & Georgetown R. R. Company, in his answer in said railroad case in the circuit court of Alex. County, Va., as well, also, as in the answer of C. R. Coleman, and others, specially referred to in my answer to the 30th question in my deposition taken
in this case, which are therein referred to, and made an exhibit
181 here; and the settlement of said judgments is still further proved by the fact that many of them are marked satisfied, by order of Alexander Hay, in the records of the circuit court of Alexandria Co.,

Va., and, also, the county court of the same county, as set forth in Exhibit A to the original bill.

(Answer excepted to.)

85th question. Do you claim that said Hay collected [the] said judgments and claims in any other mode, or from any other source, than the interest he secured in the said Wash., Alex. & Georgetown R. R. Co., a company which was formed after the sale of the said Alexandria & Washington R'road Co., under a deed of trust? If yes, say how and in what way?

Answer. I have stated that I do not know, of my own knowledge, how these claims were settled by him or paid to him. I only know that from a printed record of a case now pending in the supreme court of the District of Columbia, in the summer of 1861, Hay claimed these judgments as his own property, before the city councils of Washington; and that in 1861 he appointed Joseph B. Stewart his attorney and agent to look after his claims against the Alexandria and Washington R. R. Co., and that by virtue of these judgments he laid claims to and took possession of the railroad-iron that was removed by the Government with a view to replace it with heavy iron, and did sell the same for about $12,000, as proved by the deposition of Oscar A. Stevens, made an exhibit with my deposition in this cause, which said sum of money has never been accounted for in any manner that I ever heard of.

(Answer excepted to.)

86th question. Will you be so good as to answer the question I put, whether you claim that said Hay ever collected said judgments or claims, or that the same were ever paid in any other way than by the interest he *received* [secured] in the said Wash., Alex. & Georgetown R. R. Co., and whether the same were ever paid by any other party, person, or corporation than by the said Washington, Alexandria & Georgetown R. R. Co.?

Answer. I claim that Mr. Hay received full benefit and full value for these judgments and claims; the exact manner in which he did, I do not know. It was by the use of these judgments, in a great measure, I believe, a sale of the railroad was brought about. I can state nothing farther, but must refer to the exhibits filed in the case in my answer to the 30th interrogatory of my deposition, and the exhibits there referred to, and also to the correspondence between Mr. Hay, as shown in the record of the suit of The Wash., Alex. and Georgetown R. R. Company vs. The Mayor, Board of Aldermen, and Board of Common Council
182 of the City of Washington, and made an exhibit, by agreen ent of counsel, in this case. I have been informed that Mr. Hay sold the interest which he acquired in organizing the new company for about $73,000.

(Answer excepted to.)

87th question. Will you be so good as to state whether, since you concluded your answer a few moments ago, stepped out and conferred with your counsel, returned and made the addition just concluded to your previous answer, whether you took advice from your counsel in reference to your examination, or what you should say in further answer of the question previously put?

Answer. I did not take advice of what I should say, but my counsel, Mr. F. P. Stanton, asked me if, during the cross-examination, I had stated in answer to any question what I understood Hay sold his stock for, which he held in the new company. I told him I had not, but would either state it or prove it hereafter. It was therefore that I made the addition to the above answer.

88th question. Seeing you will not answer my question, I will now ask you to state if you do not know that neither yourself as purchaser,

nor yourself, the Alexandria and Washington R. R. Company, nor Walter Lennox, as joint obligors in said judgments and claims, never paid the said Hay any part of said judgments or claims?

Answer. I certainly did not mean to evade your question in any manner, and thought I had answered. I know that neither Walter Lennox nor myself have paid the said claims or any part of them. I left Alexandria in May, 1861; Mr. Hay claimed to have possession of the road, either by himself or his attorney, J. B. Stewart, and what occurred between that time and my return to Alexandria, in 1865, I do not know.

89th question. Do you not know that the said Alexandria and Washington Railroad was sold under a deed of trust in April, 1862, and that Hay became a purchaser at that sale?

Answer. The records show this, and the sale did take place under a deed of trust, as stated, but I do not think the sale was a valid one, or passed any title to the said railroad, or divested the old company of it, and so have decided the different Virginia courts in which a suit for the recovery of the railroad has been pending up to and including the supreme court of appeals of Virginia.

90th question. Do you not know that a corporation or company known as the Washington, Alexandria and Georgetown Railroad Co. was formed after the said trustee's sale was made?

183 Answer. There was such a company organized after the sale, and basing its claims as a company upon the sale.

91st question. Do you not know that the said road was taken possession of by the Government of the United States, and used for military purposes, from 1861, until about the time of your return in 1865, so that neither the said Hay nor any one else connected with the old or the new company derived any benefit from it?

Answer. It was taken possession of by the Government some time in 1861, but exactly when I do not know. They continued to use it until the close of the war; but, while in possession and use of the Government, and complete running order, the road was sold, and the Washington, Alexandria and Georgetown Railroad Co. claimed to have organized under said sale, which sale took place in April, 1862.

(Answer excepted to.)

92d question. And now state if you do not know that the only collection of said judgments and claims in Exhibit A, and assignment in Exhibit C, made by said Hay, was in the stock received in said new company, and his subsequent sale of the same, as stated in your former answer?

Answer. I do not know anything about it. I have never seen any of the transactions of settlement made between the Government and the railroad companies, either new or old.

(Answer excepted to.)

93d question. Do you claim, or are you informed that said Hay derived any other benefit for said judgments or claims than the stock he received in said new company, and afterwards sold as you have stated?

Answer. I am not informed, as before stated, how the judgments or claims against the Alexandria and Washington Railroad Co. were settled, or what benefit he derived from them, otherwise than as set forth and shown in the various exhibits filed by me in this case.

(Answer excepted to.)

94th question. You have spoken of the sale made by Hay of the stock he received in the new company formed under said deed of trust sale, and for which you have stated you were informed he received $73,000. Will you be so good as to now state whether this is the collection of the said judgments or claims, and if this is the money you claim as belonging to you less the sum of $5,000, with interest?

Answer. I claim that Mr. Hay received full compensation for the claims and judgments mentioned in Exhibit A. How he received them or collected them I do not, of my own knowledge, know. Some
184 of them are marked "satisfied" on the docket by his order, but how satisfied, I don't know. Whether they were paid for by money received from the stock he sold, or whether some of these claims were settled by the receipts of moneys derived from the sale of the old iron, I do not know; but believe him to have been fully compensated in some way or other for all these claims.

(Answer excepted to.)

95th question. How do you know, then, the said Hay received anything for said judgments and claims, and may he not have marked them satisfied without receiving any pay for them?

Answer. Mr. Hay says himself in his answer and affidavit that he was remunerated for all the money he had expended in connection with the railroad. The presumption is against his marking the judgments "satisfied" unless they were satisfied.

(Answer excepted to.)

96th question. Do you know of your own knowledge that said Hay ever did receive one dollar on account of said judgments or claims?

Answer. When these transactions occurred, I was absent from this part of the country and have no personal knowledge of what occurred in my absence.

97th question. Do you claim as belonging to you money said Hay may have received for the sale of his stock in the new company formed pursuant to said deed of trust sale in 1862?

Answer. My claim is set forth in my original bill, filed in this case, and to that I refer.

(Answer excepted to.)

Answer. And all that I claim is set forth in my original bill in this case.

(Answer excepted to.)

98th question. Do you decline to state whether you claim as belonging to you the money which said Hay may have received for the sale of the stock in the said new company, and that such is the basis of your claim against the said Hay in this suit?

Answer. I do not claim in this suit the amount of $73,000, or thereabouts, which Hay sold his railroad stock for, because that is a larger amount than set forth and claimed in my bill, nor do I claim any specified monies received by Mr. Hay; but what I do claim is satisfaction or compensation for the claims belonging to me, and set forth in my original bill.

99th question. You do not claim the proceeds of the stock in the
185 R. R. Co., which Hay sold, or any other specific sum received by him. Please state what money or consideration received by said Hay for said judgments and claims you do claim of said Hay.

Answer. I did not say that I did not claim any specific sums received by said Hay. What I claim is compensation for the claims and judgments as set forth in my Exhibit A.

100th question. Will you please state who and what property was bound by said judgments or claims?

Adjourned until Friday, May 13, 1870, at 10 a. m.

FRIDAY, *May 13th*, 1870.—Cross-examination resumed, pursuant to adjournment.

Present, Messrs. Stewart, Hay, and French.

100th question. Last question repeated with the addition "at the date of the assignment from Hay to you, as shown in Exhibit C."?

Answer. The property bound by the judgments was that of the Alexandria & Washington R. R. Company; if this was insufficient to pay the judgments, then Lennox and myself were bound as indorsers on several of the notes; I do not remember which without referring to them.

101st Q. In speaking of the property of the Alexandria and Washington R. R. Company, do you include the rolling-stock of said company?

A. The property of the railroad company included everything belonging to it, rights, franchises, privileges, and road-bed.

102nd Q. When you took the rolling-stock away, and placed it out in the country on the Orange & Alexandria road, did you not put it out of the reach of the owner of said judgments and creditors of the road for applying it to the payment of their debts?

A. I think not, because if there were no obstacle in the way, executions could be levied upon the property wherever found. The property was removed out but a short distance into Fairfax County, in which Alexandria is situated, but the executions on the judgments could be effective until the removal of three deeds of trust, which were
186 prior liens ahead of the judgment, to wit, the deed of trust to secure the city of Washington for guaranteeing the bonds of the company, amounting to $60,000, the deed of trust to Fowle, Snowden & Co., and the third deed to Walter Lennox to secure the issue of coupon bonds.

103rd Q. Do you not know there was a large rebel army intervening between the creditors of the Alexandria & Washington R. R. Co. and the place where you put said rolling-stock?

A. I do not; I remember no forces except a company or two, and they were in Alexandria, in addition to the volunteer companies residing there. Executions would have to be served by Virginia State officers, and there was nothing to prevent them from going to any part of the country or even State, the secession not having been ratified at that time by the people.

104. Q. Had the ordinance of secession been passed by the Virginia convention at the time the rolling-stock was moved, or when you left Alexandria?

A. It had been passed before the rolling-stock was moved, and before I left Alexandria, but not voted on by the people to whom it was submitted; I think it was voted on the day or day before the city was occupied by the United States troops.

105th Q. Do you not know that no citizen or creditors in a northern State could, at that time, avail themselves of any civil process in the State of Va., for the collection of their debts?

A. I do not; whether there was anything to prevent it or not, I don't know. I think the civil tribunals were all in operation at the time. That is my impression about it.

106th Q. Did not the judge, sheriff, and clerk of Alexandria County all join in the rebellion and leave southward about the time you did?

A. I really don't know; the judge lived in a distant county, and whether the sheriff or clerk left, and when, I don't know. I knew nothing of their movements, but believe the clerk's office was open for months afterwards.

107th Q. Where did you leave that said rolling-stock? Describe the place, and in whose charge.

A. That I can't do; it was carried to the Orange & Alexandria R. R. depot, and by some of their trains carried out upon the road, but exactly where left, and by whom carried, I don't know. It was removed to the depot by my order, under the superintendence of E. S. Boyn-
187 ton, was placed in the charge of nobody, but simply with the request that the Orange Co. would move it out on the road somewhere with a view to its safety.

102½nd Q. You really left the said rolling-stock then in charge of the Alexandria & Orange R. R. Co., to be taken care of for the time being by them?

A. I did not; I had no right to impose upon them any such trouble or responsibility whatever. There was great excitement at the time and great trouble. The Orange & Manassas road' were both removing what movable property they could, and my rolling stock was placed there to take the chance of being carried out by any opportunity that would occur.

103½rd Q. Do you not know that both the Orange & Alexandria and Manassas roads removed their rolling-stock for the purpose, and did devote it to the use of the rebel government, and did not the officers of said companies leave Alexandria at or about the time you did, and remain in the confederacy during the rebellion?

A. I do not; the president of the Manassas road lived far out on the road, near the valley of Va., I think. When Barbour, the president of the Orange road, left I don't know. It is impossible for me to remember if I had ever known. I don't remember seeing any of these parties at that time.

104½th Q. Please state when you next saw said rolling-stock and where, after you so left it to take its chance on the Orange & Alexander road.

A. I think it was in the fall or winter of 1861, that I got some of the trains, or engineers in charge of the trains, to bring such of it as they could find down to Richmond, where some of it was brought, greatly injured, having been greatly abused. From the engines all the movable parts that could be gotten off were taken by persons unknown, and such of the cars as I could recover had all the glass broken out; they were greatly injured, and chiefly valuable for the running-gear. Several of the cars I never did get; they were but a short distance from Alexandria, I learned, and never were recovered.

105½th Q. Had the said rolling-stock, or any part of it, been in use between the time you left it and next saw it?

A. Never in use on a railroad that I ever heard of. Some of the cars were converted, I think, into houses, or offices, or tents, but were never used on the track that I ever heard of.

188 106½. Q. Was there not a great demand for engines, cars, and equipments for railroads in the South at that time?

A. There was during the war a very great demand. When these engines were stripped of the removable parts (such as could be taken off) they became useless; but, apart from that, the engines and cars were so small and so light that they could not be used where heavy and quick transportation was required, and never were used, to my knowledge, at all, except as stated in reference to the cars, which were small horse-cars.

107½. Q. What did you do with said rolling-stock when you got it to Richmond?

A. I first tried to find some place where I could shelter it or deposit it and have it taken care of, and, with a view to this, I got the engines repaired. Being unable to find any place of shelter, I tried for some time to sell them, and finally did so. after they had been repaired. With respect to the cars, I could do nothing toward repairing them, but sold them in the condition that they were in just for the running-gear.

108. Q. To whom did you sell them, and when?

A. I think in the winter of 1861 and 1862, or in the spring of 1862. I sold one of the engines to a man named Freemont, I think from still farther South. His Christian name I do not remember, or his place of residence. There were two engines. The other was sold to a gentleman named Mallett. His Christian name I do not remember, or where he resided. He was a North Carolinian, I think. I also think that there were four cars, or the running-gear thereof, and they were sold at the same time, either to one or both the parties named. Whether one bought all or each bought a part I do not remember.

109. Q. Were not these parties engaged in working railroads in the South at that time?

A. I do not know. I suppose that they were in some way connected with railroads, though I have no knowledge that they were.

110. Q. Do you not know that every railroad and every particle of rolling-stock and railroad material in the Confederate States was in the use and under the control of the rebel government then existing at Richmond, where you repaired and sold that rolling-stock?

189 A. You ask me to state what it is utterly impossible that I could know. The most I could do would be to draw an inference from the circumstances of the hour. That any one can do. I suppose if a man or company owned a railroad leading to a foundry or to a coal-bed, that these people would have been permitted to work their roads without their being directly under the control of government, while, at the same time, as a mere matter of opinion, the resources of the whole southern country were appropriated by the confederate government when it pleased.

111. Q. What was the value of said rolling-stock at the time you removed it in May, 1861, from the road to which it belonged?

A. That I don't know. I should first have to refer to the cost of it and how much it had worn, to decide, which I have now no means of doing. I say, however, that it was in running order, and used upon the road until the Government stopped all intercourse between Alexandria and the Long Bridge, which was some time before the city was occupied by the United States troops.

112. Q. Did you not in the month of March, 1861, estimate the value of that rolling-stock to be full $25,000?

A. I do not remember. It could easily be ascertained by referring to the cost of engines and cars. They were in good running order when removed.

113. Q. What price did you sell the said rolling-stock for?

A. I think I sold the two engines after they had been repaired, and the remains of four cars, for about $11,000 in the currency of the day, confederate money.

114. Q. What did you do with the money you received for said rolling-stock?

A. I laid out most of it in confederate bonds. A considerable part of it was required in repairing the engines, to enable me to sell them at all.

115. Q. You have spoken repeatedly of a sale of the Alexandria and

Washington Railroad under a deed of trust, and a company being formed pursuant to that sale, called the Washington, Alexandria and Georgetown Railroad Company, in which the defendant Hay received a certain amount of stock, which you have stated he sold. Did you ratify that sale after your return in 1865?

A. No.

190 116. Q. Did you not, with others, bring a suit in Alexandria County, and have that sale set aside as being illegal and void?

A. I did, by the authority of the Alexandria and Washington Railroad Company, and in the name of that company.

117. Q. By the result of said suit did you not recover back the said Alexandria and Washington Railroad, in a greatly improved condition as to what it was when you left it in 1861?

A. In the suit referred to I obtained a decree ordering the possession of the road to be restored to the old company, but I have not been able to get possession of the same and hold it. The road has been much improved since 1861, and all the improvements on the road were made, I think, by the Government, with the exception of the bridge across the Potomac.

118. Q. Did not the said Alexandria and Washington road fail to pay running expenses previous to your leaving in 1861, and did not some of the employees attach the superintendent or the property of the company for their wages?

(This course of examination objected to by Mr. Stanton, who had just come in, as wholly irrelevant to the case.)

A. There probably were times when the road paid its expenses. There are other times when its receipts were much more than its expenses. When the Long Bridge could not be passed over the road could not be operated. When intercourse was prohibited by the Government over the turnpike between Alexandria and Washington, the road had to suspend operations, while the expenses were going on at the same time. I don't know as to the latter clause of the question.

119. Q. Did not Mr. Joice, the engineer, stop work and attach for his wages, before there was any interference from the Government?

(Question objected to by Mr. Stanton.)

A. I don't know. There was some personal trouble or dissatisfaction on the part of Mr. Joice, one of the employees of the railroad company, but what it grew out of I do not remember.

120. Q. If said judgments or claims specified in your Exhibits A and C were not marked "satisfied," as you have stated, would they not still be in force against the Alexandria and Washington Railroad

191 Company, yourself, and Walter Lennox?

A. That is a legal question, and the province of the court is to decide such questions.

121. Q. Do you know or can you state any matter of fact that would prevent the said judgments or claims being a debt against the company and parties referred to if they were not satisfied?

A. Both the counsel interrogating me and Hay, the defendant, say these claims have been paid to Hay. If they have been paid once you could not require them to be paid a second time.

(Answer excepted to.)

122. Q. Will you please answer the question I put as, that if the said judgments and claims were not satisfied, do you know of any matter of fact that would prevent the said from still being a debt against the said company and party referred to?

A. By the action of the counsel interrogating me, Alexander Hay

and others, they claim that the Alexandria and Washington Railroad Company has been annihilated by a sale of all its franchises, property, &c., and superseded by the company called the Washington, Alexandria and Georgetown Railroad Company. If this be true, there is nothing out of which to make any claim against the Alexandria and Washington Railroad Company.

(Answer excepted to.)

123. Q. But you have just stated that, by the decision of the courts of Virginia, the said sale was annulled, and that yourself and others had recovered back the road of the Alexandria and Washington Company in a greatly improved condition, and with the said judgments and claims all satisfied and paid. I therefore ask you that, if the said judgments and claims were not satisfied as stated, do you know of any matter of fact that would prevent them being a debt against Alexandria and Washington Railroad, James S. French, and Walter Lennox?

A. I did not state that we had recovered back the road. I said the Virginia courts had ordered it to be restored to the old company, but, as yet, the old company has been unable to get possession of it. It is a matter still in litigation; even the title to the road may or may
192 not be determined for years. Nor did I say that all the judgments were marked satisfied; but I did say I believe Mr. Hay to have received full compensation for them in some way or other. I know of nothing besides what I have said. If they have never been settled, they still stand against the company, James S. French and Walter Lennox as endorsers.

(A written paper was here handed to Mr. French, which the counsel for defence demanded should be read first by the auditor. It was read then aloud by Mr. Stanton, counsel for plaintiff, and then the regular order of examination was resumed. This paper marked "M. W. S. C., auditor.")

124. Q. If Hay had not collected and satisfied said judgments and claims, as you have stated, but left them to pass to you under said Exhibit C, and the same were now under your control, from whom would you collect them or expect to get your pay?

A. In such a supposed case the Alexandria and Washington Railroad Company would be bound for them.

125. Q. But if the Alexandria and Washington Railroad Company could not pay said judgments and claims, would you not yourself be bound for them, as guarantor, in the event above mentioned?

A. I would for my proportion if I had not been released.

126. Q. Does it not follow, then, as a matter of fact, that if you got the deed of trust sale annulled, and recovered the Alexandria and Washington road back under the order of the court you have spoken of, with the said judgments paid and satisfied, you in reality received the full benefit of the judgments by getting the property back, which was bound for it, free from said judgments and debts?

A. On the supposition above put, the Alexandria and Washington Railroad Company would clearly be the gainer. The judgments in controversy I claim as my individual property, and not as belonging to the company.

127. Q. Now, I will ask you to be so good as to state what was the amount of your interest in said company as a proprietor or owner of the stock of the Alexandria and Washington Railroad issued or to be issued.

A. I was three-fourths owner of the same and Walter Lennox was the owner of the other fourth.

Adjourned until 10 a. m., 14th May, 1870.

193 MAY 14, 1870.—Cross-examination resumed, pursuant to adjournment.

Present, Messrs. Stewart, counsel for defendant, and Stanton, counsel for plaintiff; also, the plaintiff and defendant.

128. Q. You say that you owned three-fourths of the Alexandria and Washington Railroad at the date of the Exhibit C, and Walter Lennox the other fourth. I will now ask you to state whether or not, if Hay had not satisfied the judgments and claims, as you have alleged, and the same remained in force, if you would not have been bound for the payments of three-fourths and Lennox for one-fourth of said judgments and claims as the owners of said road, even admitting it to be true that you had both been personally interested, released by Hay?

A. If we had been released from our individual indorsements the company would still have been bound; but, inasmuch as I owned the judgments and claims individually, my interest as an individual might have been greatly affected, because the judgments created prior liens over a large portion of the debt of the company, and the road, in the event of a sale under some of the trust-deeds or liens, might have sold for enough to pay said liens and judgments, and still not enough to pay the other outstanding debts.

129. Q. Would you not, in any event, as a three-fourths owner of the road, have been pro-rata bound for all the debts, whether prior liens or ultimate demands, and Lennox likewise bound for the other fourth to the extent of your respective interest in said company, and absolutely bound as guarantors for all debts and claims not released?

A. That depends upon circumstances—upon specific provisions of the charter and act of incorporation. If by such provision or act the stockholders of the company were or are bound, then we would be bound.

130. Q. But would you not first be bound to the extent of your respective interests in the road, and personally bound if you guaranteed any of the debts not released by Hay?

A. If not released from any debts for which we were personally bound, we would, of course, have still been bound for them. There is a
194 marked difference between a corporation and individuals. The company was first bound for debts created by it. I have stated what our respective interests were.

131. Q. I will now ask you if Walter Lennox went South during the rebellion, and if so, how he was engaged while there?

A. He did, and I saw him in Richmond in the fall and winter of 1861 and 1862. He was boarding at a hotel, and never engaged in any occupation whatever that I ever heard of.

132. Q. Did he apply for or receive any office or position in the rebel army or service, within your knowledge or information?

A. He never did that I ever heard of.

133. Q. How often did you see Mr. Lennox, and did you ever see him dressed in uniform of any description or grade of rank?

A. I don't know how often I saw him. We lived in different parts of the city. When I first went to Richmond I saw him frequently; afterwards, not so often. I never recollect to have seen him dressed in uniform.

134. Q. You have stated you were, at the date of said Exhibit' A and C, and still are, the president of the said Alexandria and Washington Railroad Company. Occupying such a position, how could you purchase or acquire judgments or claims which you could not enforce or own in your own individual capacity?

A. I claim to be such, and so the Virginia courts have decided. I see nothing incompatible in the president of a company settling claims against the said company and holding them as his individual property. If there be any incompitability in so doing, the stockholders of said company would be the persons to make such objections, and not third parties.

135. Q. And, inasmuch as you and Lennox owned the whole road, as stated, and hence were the sole stockholders, there was no one who could make the objection. Is that true?

A. I have stated the facts, and you must draw your own inference.

136. Q. Were there any other stockholders than yourself and Lennox at the date of this suit?

195 A. There were not.

137. Q. Are there any other stockholders than yourself and Lennox at this time?

A. That is a question involved in litigation. There are other parties who claim to be stockholders also.

138. Q. In the 3d, 4th, and 5th questions and answers in your examination-in-chief, you have stated there was a verbal contract entered into between you and Hay, whereby Hay was to purchase and consolidate all the debts of the Alexandria and Washington Railroad Company. Will you please state the precise date when that contract was made?

A. I cannot. It was some time in the summer of 1859.

139. Q. Where was said contract made, and who were present besides yourself and Hay?

A. I do not know where it was made, nor that there were any persons present. I discussed it in frequent conversations, and tried to show him that it would be a profitable one to him, and also urged it in letters addressed to him, which are shown in his Exhibits Nos. 2 and 3, I think.

140. Q. Was it your object, by the discussion and letters you refer to, to induce Hay to enter into such a contract or agreement?

A. It was; because I deemed it a very profitable one for himself, as well as a good one for me; and circumstances have shown that if carried out by him, it would have been exceedingly valuable to him.

141. Q. Was it after the close of this correspondence that you concluded said contract with said Hay?

A. I corresponded with Hay, as a personal friend, up to the time that I left Alexandria, in May, 1861, when all correspondence was cut off between the North and South. The agreement between us was vacated by the power of attorney and assignment, marked Exhibits B and C with the original bill.

142. Q. What was the amount of debts that Hay agreed to pay for the said Alexandria and Washington Railroad Company in the consolidation of its debts, as you have stated?

A. I cannot state the exact amounts; but the understanding was to consolidate or settle the debts of the company. The principal

196 debts that could give the railroad company trouble was the debt due the city of Washington for guaranteeing the bonds of the company; the debt due Fowle, Snowden & Co., secured by collaterals,

I wished released. The third deed of trust to secure $30,000 in coupon bonds, I did not regard would ever give any trouble, because Thornton, who purchased them, had never paid but about $5,500 on them. The balance he promised to pay I never could get, and frequently offered to give him back the $5,500 if he would give up the coupon bonds he had purchased, which was all, I thought, the court of equity would ever require. Besides this there were floating judgments and claims which I wished settled, and these are set forth in Hay's Exhibit No. 1; and other claims which I thought we could manage and pay along as the road would earn them.

143. Q. Was not the debt to the corporation of Washington $60,000 with accruing interest?

A. It was, originally.

144. Q. Was not the debt to Fowle, Snowden & Co., about $15,000 with accruing interest?

A. It was, and this debt was likewise secured by collateral securities.

145. Q. Did not the debts specified in Hay's Exhibit A amount to about $40,000 in the summer of 1859?

A. The debts specially referred to in his Exhibit No. 1 amounted to between $16,000 and $17,000. This exhibit will speak for itself. The Anderson debt referred to in said exhibit had been assigned to me some time before, and was re-assigned to me when he replied to my letter, his Exhibit No. 1.

146. Q. The question I ask you is, did not the aggregate of the debts specified in said Exhibit No. 1, filed by Hay, including the Anderson debt, and all others, amount to about $40,000 of debt as against said company in the summer of 1869?

A. The debts specified, with the Anderson debt included, amounted to probably, as you state, $40,000.

147. Q. You say you did get as much as $5,500 on the 3d deed of trust, did you not?

A. About that sum.

148. Q. Besides the sums named, did not the other floating debt you speak of amount to about $30,000?

197 A. I do not know the amount. I do not remember; but there were several items of debt not herein mentioned. What they amounted to I don't know.

149. Q. Would the said floating debt amount to about $20,000?

A. I really can't remember.

150. Q. Please state, then, how is it possible that you ever could have made a contract with Hay, in the summer of 1859, for the payment of the general indebtedness for the said Alexandria and Washington Railroad Company by Hay, without you, or he, ascertaining the amount of debt to be paid?

A. The amount was shown in the records of the company, and while this was a matter that I was familiar with in 1859, it does not follow that I should be able now, after so long a lapse of time, to tell each item of indebtedness. There was none of its indebtedness that I did not make Mr. Hay acquainted with. The company was surrounded with difficulties, and its entire indebtedness could have been compromised and settled on most favorable and reasonable terms; and these difficulties grew out of the trouble in getting a railroad across the Potomac River at the site of the Long Bridge.

151. Q. Did you not inform Hay that the aggregate of debt against the Alexandria and Washington Railroad Company, in 1859, was about $150,000?

A. I do not remember. The indebtedness of the company, with very few exceptions, was a matter of record. What that amounted to, or what it could have been settled for, I do not now remember; but, certainly, very much less than the nominal amount.

152. Q. Why could the debts of the Alexandria and Washington Railroad Company be settled for very much less than the nominal amount, if the company was solvent and the road was worth as much as its debts?

A. The depreciation, as before stated, grew out of the difficulty of obtaining a charter from Congress to cross the Potomac River at the site of the Long Bridge. This was bitterly opposed by Georgetown and its citizens, by the Baltimore and Ohio Railroad Company, and by other opposing interests; and while it was believed a crossing would be made there at some time, it would be a work of delay. There were three
198 deeds of trust on the railroad company, as before stated: the 1st, to the city of Washington; and the corporation authorities of Washington City saw that Lennox and myself, through our exertions, were keeping the Long Bridge where it was, and without our exertions that the bridge would have been removed. It was for this reason the said authorities were very kindly disposed to Lennox and myself, and would have settled the debt due the city upon most favorable terms; because the principal troubles of the railroad company grew out of this bridge question.

153. Q. Was it not an ascertained fact that, without a charter and bridge across the Potomac at or about the site of the Long Bridge, the Alexandria and Washington road could not sustain itself or pay its debts, if only worked from the south end of the bridge to Alexandria?

A. It was certainly not an ascertained fact; for even conducted as the road then was, there were times when it was profitable. It was profitable when the river was blocked up with ice and the road formed the chief means of reaching Alexandria and the South.

154. Q. Did said road ever, in any one year, while it was worked, earn money enough to pay its expenses, repairs, and interest on its bonded and liquidated debt?

A. I cannot speak positively. I think it probable that it did not. When there were times, as I before stated, it was profitable.

155. Q. When you state that you think it is probable that said road never, in any one year, earned enough to meet its current engagements and outlays, how do you say that it was not an ascertained fact that said road could not sustain itself as then constructed?

A. Because it had not been long enough in operation to test it fairly. The business of the road and the number of passengers passing over it were constantly increasing.

156. Q. By what basis was Hay to know or determine the amount of debt he was to assume and pay?

A. I stated to Mr. Hay everything I knew about the condition of the road, and every circumstance, to the best of my knowledge and belief, regarding its value, its indebtedness, and how I thought it could be settled or adjusted.

157. Q. The object of all the questions I have asked on this point of your examination is to see if I could ascertain what amount of
199 money or credit Hay was to advance for the Alexandria and Washington Railroad under the verbal agreement you have sworn to was made in 1859, and you refuse to state any amount. I will now ask you if there ever was such an agreement positively made by Hay, or was t anything more or less than a correspondence and conversation between you and Hay on that subject?

A. To all the first part of the question down to the words "any amount," I have not declined to state anything I know; but, as these debts were to be compromised on the best terms that could be had, what amount would be required would depend upon the terms upon which they could be settled. There was an agreement such as I have several times stated.

Adjourned until Monday, May 16, 1870, at 10 a. m.

MONDAY, *May* 16, 1870.—Cross-examination resumed, pursuant to adjournment.

Present, Messrs. French, plaintiff; Hay, defendant; and their respective counsel.

158. Q. If the amount to be paid by Hay for the whole indebtedness of the Alexandria and Washington Railroad Company depended upon the result of compromises, as stated in your last answer, how could Hay know what amount of money he would have to pay for said company?

A. The debts were to be compromised on the best terms that could be had. He could not know what it would cost until he had tried to effect a settlement, which he did not do in reference to all the claims.

159. Q. If there could be no compromise made, was Hay then bound by said verbal agreement to pay the whole face of said judgments and claims?

A. Hay agreed to consolidate the debts of the company, and it was notorious, at the time, for reasons that I have elsewhere stated, that this could be done at much less than their nominal value.

160. Q. The question I ask is, that if said debts could not be compromised, was Hay to pay the full amount of the judgments and claims?

200 A. I think, under the agreement, that he was bound to consolidate all the debts and make the best terms he could, the road being amply able to pay its debts, and no doubt was entertained at the time that the debts could be settled for less than their nominal amount.

161. Q. Do I understand you to include the whole debts of the Alexandria and Washington Railroad Company?

A. I have mentioned the debts specifically which were first to be arranged: The debt to the city of Washington; Fowle, Snowden & Co.'s debt, and the judgments. The other debts could not interfere with the road at that time; but they were all to be settled and transferred to Hay. It was suggested by Hay, I think, that some of these debts, and especially the Washington debt, could be settled by issuing the bonds of the company, which was contemplated, and I agreed that it would be a good plan after the judgments and the city debt had first been settled; but until the liens were removed the bonds would not be available.

(Mr. Stanton, plaintiff's counsel, left at this stage of the examination.)

162. Q. You say that Hay proposed to provide for the purchase of the road by the use of its bonds, as you have stated. Was the amount of the bonds named?

A. I did not say that Hay proposed to provide for the purchase of the road by bonds; but the subject of how the Washington debt could be settled was a matter of discussion between us. I think he suggested that this could be done by the bonds of the company, to which I objected, upon the grounds that the bonds of the company could not be better security than the lien which the city then held; but that after the liens

had been removed, then the bonds could be made available to re-imburse him for advances he may have made. The amount of the bonds was not named, as I remember. The company, by act of the Virginia legislature, had the right to issue $70,000 in coupon bonds, having issued prior to that time $30,000 under an act authorizing them to issue $100,000.

163. Q. In what way was Hay to be paid for the advances that he might so make under the alleged verbal agreement?

A. All the claims purchased by him were to be assigned to him and held as liens against the road, and for all advances so made he was to be re-imbursed out of the road.

201 164. Q. Please explain what you mean by being re-imbursed out of the road. Do you mean by its earnings or in stock?

A. The object of the agreement was to place the debts of the company in the hands of one friendly creditor, who could hold them and aid in working through the enterprise and establishing it. Then these matters were to be settled by agreement perfectly satisfactory to him and acceptable to him. What that would have been depended upon circumstances, whether most advisable to sell out or work the road.

165. Q. There was then, in fact, no definite mode for the repayment of Mr. Hay agreed upon; but it was to depend upon circumstances?

A. The agreement was definite to the extent that the advances made by him constituted a lien on the road, and must first be paid before a mere stockholder in the road could claim any precedence over them.

166. Q. When you say that you think Hay proposed or suggested the use of the bonds of said Alexandria and Washington Railroad Company for any general purpose, are you not wholly mistaken, and did not you both suggest and urge such a measure upon Hay about the time you have spoken of?

A. I do not remember the particular circumstances occurring at that time. The matter was discussed between us several times, and my impression is Hay thought that we could use the bonds to settle the Washington City debt. I did not think we could, because the bonds would be founded upon the very security that the city held at that time.

167. Q. Did you not state and urge upon Hay that by adopting your view the road could be made to pay for itself under the deeds of trust liens you have spoken of with but the temporary use of any money, and that all other debts could thereby be excluded, and you and Hay own the road?

A. I do not remember the particular views referred to or opinions entertained by me at that time. In my correspondence with Hay I frankly gave him my views, and they were such as I entertained. I think now that if Hay had *have* paid off the liens against the road and owned the Washington City debt and lien on the road, which I think he could have gotten then on most reasonable terms, and have

202 sold out the road under that lien, he could have become the owner of it, and thus would have consolidated all the debts of the company without much more, if any, outlay, taking into consideration the debts were reduced to judgments and purchased.

168. Q. But the sale under the deeds of trust would have obliterated the old company and created a new one. How can you say, then, that such means would have consolidated the debts of the company thus destroyed?

A. I did not say that the sale under the trust-deeds would obliterate the old company and create a new one. I did not say that the debts would have consolidated the company thus destroyed. The effects of

sales under deeds of trusts are legal questions for the court to settle and determine.

169. Q. Were not all the modes of selling, purchasing, or handling the road suggested by you to Hay, and not by Hay to you?

A. It is impossible for me to remember the particular circumstances after so great a lapse of time. The subject was one of frequent discussion between us.

170. Q. Do you not know that it was your intention all the time to sell the road to some purchaser for the best price you could get, and did you not urge upon Hay to make such a sale and provide him with language, terms, and figures to use to that purpose?

A. I do not know that it was my purpose all the time to sell the road to some purchaser for the best price I could get, for it was not. I was disposed and ready to make sale of the road if the terms could be made satisfactory. I had great confidence in Hay, and would have been governed very much by his opinion, and probably consummated, as far as I could, any sale that he might have made. As to furnishing him with figures, language, &c., &c., I do not remember; but I had repeatedly impressed upon him the value of the road and the reasons upon which I founded my estimates. These, in all probability, I gave him. Whether in writing or not, I don't remember.

171. Q. Did you not provide Hay with words, terms, and figures to be used in making sale of said Alexandria and Washington Railroad to the Baltimore and Ohio Railroad Company?

A. I cannot remember. If I empowered him to make a sale of the road I in all probability gave him all the evidences I had of its
203 value, as well as my opinions; and it is very probable that I did, for, as before stated, I would have been greatly influenced by his wishes or opinions on the subject.

172. Q. Did the verbal agreement with Hay you have spoken of precede or succeed these instructions to sell, if any were given by you?

A. I do not remember.

173. Q. Will you now please look at the original of Exhibits Nos. 2, 3, 4, 5, and 6, and 12, filed with the answer of Hay, and state whether the same are in your handwriting?

A. Nos. 2, 3, 4, 5, 6, and 12 are in my handwriting.

174. Q. Please state if the above exhibits filed are true copies of the originals which you have just stated are in your handwriting.

A. Yes; they are true copies. Of the above exhibits, No. 2 is dated July and No. 12 is dated May 20, 1854. The others are without date.

175. Q. Will you now please look at the papers and communications I now present to you, numbered as follows: 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and say whether the same are not in your handwriting?

A. I have glanced over the several letters and papers referred to, numbered from 30 to 34 inclusive, and from 36 to 66 inclusive, and think they are in my handwriting.

176. Q. The papers and communications just shown you, and which you say were written by you are not dated, or are but partially dated, and are without signature. What object had you in omitting dates and signatures?

A. I have not read one of them, and know not whether they are dated or partially dated, or anything whatever about them, not having read a single one of them. They were written some eleven years ago. If sent by mail the envelopes would show the date. If received by Mr.

Hay otherwise, he has the means of knowing the dates. The only reason that I can assign was the constant and almost daily and sometimes several per day communications passing between us. In one of his exhibits I tell him that I have written him in the last twelve months over one hundred letters on his own business. I can assign no reason except that from our intimacy there was no formality in our letters.

204 (The counsel for defendant now puts in evidence all the communications and papers above referred to, in addition to those specially made exhibits. These papers and communications are marked M. S. C., auditor.)

177. Q. Will you now please look at Nos. 63, 64, 65, 66, above referred to as written by you, and say whether you did not address those papers to Alexander Hay for the purpose of advising him of the use of terms, figures, and proposals for the sale of the Alexandria and Washington Railroad?

A. Mr. Hay himself knows how these papers were received. I know nothing of them or their contents, not having read them. When received he also knows. From having glanced over them, I think they were written to Mr. Hay and intended for him, whether they were sent by mail or delivered in person. The papers will speak for themselves what they were intended for and what they mean.

178. Q. Will you please state if the papers 63, 64, 65, and 66, above referred to, were not written, all or some of them, as late as the spring of the year 1861?

A. I did not know, until the papers were produced, that any such were in existence, and remember nothing connected with them, for I have not read one of them.

179. Q. Was not the paper No. 65 prepared by you for Hay to copy and address to the Baltimore and Ohio Railroad Company, or John H. B. Latrobe, its then attorney and counsellor, with a view of selling the Alexandria and Washington Railroad to the Baltimore and Ohio Company, and embracing terms and conditions upon such sale could be made, written in the latter part of March, 1861?

A. I cannot say that paper No. 65 was prepared by me to be copied by Hay and addressed to the Baltimore and Ohio Railroad Company or John H. B. Latrobe. I do not remember anything in connection with it, when written or to whom addressed. I know that it is in my handwriting, and that is all that I know about it.

180. Q. Were these papers written before or after the making of said alleged verbal agreement with said Hay?

A. I don't know. I have no means whatever of fixing the date of it except by an examination of the voluminous correspondence just filed in evidence, which I will do whenever I can find time.

205 181. Q. In the event Hay had paid all the debts you have spoken of, and consolidated the same, what amount of stock was he to have?

A. No amount was specified. He was to be re-imbursed for all his advances, and I would have allotted him such a portion of mine as would have been satisfactory to him. I had so high a regard for him that I should most probably have acquiesced in any terms he might suggest as fair and proper.

182. Q. In the paper No. 65, above referred to, you write down the debts against the Alexandria and Washington Railroad at about $150,000; and in the same paper you authorize or instruct a sale for $110,000 or $120,000; upon whom was the loss to fall for the unpaid portion of the debt?

A. I have not read the paper, and therefore do not know what it contains. I see the paper is not complete; the subject is continued somewhere else. All written papers must be interpreted according to their terms, and a mere hypothetical opinion would in no manner alter the meaning thereof.

184. Q. Did you not after your return from the so-called Confederate States, in 1865, sell the Alexandria and Washington Railroad to Samuel M. Shoemaker, J. Dean Smith, Oscar A. Stevens, and others, on or about the 6th day of December, 1867?

A. I did not. I made an executory agreement, the terms and conditions of which they have never complied with, and the subject is one of litigation at the present time.

185. Q. Was said agreement in writing, and will you look at the papers now shown you, marked "H. A. B., No. 1" and "H. A. B., No. 2," and say if the same are, or to the best of your knowledge and belief are, true copies of such written agreement?

A. The agreement made with these parties was a verbal one, and a day or two after making it I was summoned to Western Virginia to attend upon a very sick child. In my absence and without my knowledge, a contract was written for me which I did not make. About twelve months after this I was induced for various reasons to sign the agreement here marked "H. A. B., No. 2." "H. A. B., No. 1" was simply intended as a mortgage for the loan of $5,000, which was subsequently demanded of me by S. M. Shoemaker, and the amount I at once
206 tendered in payment, which he refused to receive. Whether the contract is a subsisting one now or not is a matter still in litigation. I have not examined these two papers, but I expect they are true copies as they purport to be.

186. Q. I see by the paper "H. A. B., No. 2," just presented, that the said Shoemaker and others were to pay all bona-fide debts or liabilities of the Alexandria and Washington Railroad Company, and were to be substituted to all the rights and remedies of any creditor so paid off, &c. Were not said judgments and claims, specified in your Exhibit, A and C, included among those liabilities to be paid and acquired by said Shoemaker and others?

A. My Exhibits A and C were never shown to Shoemaker that I remember; but I distinctly stated to him and the other parties the claims which I held against the road individually and as assignee of Hay, and my understanding was, that he assumed and would have been bound to pay all the liabilities of the road had he carried out his contract.

187. Q. How much money did Shoemaker and his associates pay you at the time of such alleged sale?

A. Not a cent. He lent me $5,000 when I executed the contract.

188. Q. Did you ever receive any other money from said Shoemaker or others on account of said contract except the $5,000?

A. None whatever.

189. Q. Besides the agreement with said Shoemaker and others for the sale of your interest in the said Alexandria and Washington Railroad Company, above referred to, have you not since that alleged sale sold all your interest except a small fraction to R. T. Baldwin, of the city of Baltimore?

A. I did make an executory agreement with R. T. Baldwin, which he has failed to carry out, though he has executed it in part.

190. Q. Was the said agreement in writing; and will you please look at the paper now shown you marked "H. A. B., No. 3," dated 3d April,

1869, and signed "James S. French, [seal,]" and state whether the said paper is, or you believe it to be, a correct copy of the original agreement so made with said Baldwin?

A. It was in writing. I believe it to be a correct copy in part
207 of the agreement I made with him. There was another paper made and executed at the same time, forming a part of the agreement, the two papers being considered as one, in which the particulars of said agreement are set forth.

191. Q. In the agreement with said Baldwin I see that you sell all "right, title, and interest, claims and demands of every kind whatsoever, whether in action, possession, or expectancy, in or to a certain corporation known as the Alexandria and Washington Railroad Company." Were not the judgments and claims specified in your Exhibits A and C intended to be included under this conveyance if said Baldwin had fulfilled the agreement?

A. I have stated that the agreement is set forth in two papers. The assignment here exhibited does not set forth all the facts of the agreement. The judgments and claims in Exhibits A and C were not intended to be included in this assignment.

192. Q. Have you the original or a copy of the other portion of the agreement of said Baldwin; and if so, will you produce it?

A. I have not the agreement here now, but will produce it.

193. Q. How much money did you receive from the said Baldwin under the assignment "H. A. B., No. 3?"

A. I have received the sum of $10,000 in part execution of the agreement.

194. Q. The $11,000 you received for said rolling-stock, the $5,000 advanced by Shoemaker and associates, and the $10,000 from said Baldwin, makes the sum of $26,000 you have received for and in part payment on account of the Alexandria and Washington Railroad since you left Alexandria, in May, 1861, does it not?

A. I have stated how these different sums were received. The $11,000 was subject to a deduction for repairs. The payment of the other sums are shown by the exhibits.

195. Q. Did you never receive more than the sum of $5,000 from Hay to be used in and about the Alexandria and Washington Railroad?

A. About $5,000 is the amount I received for the purpose of buying up the debts of the company, and no more. I had many transactions with Hay as stated in my various letters to him; but this is the only sum that I remember to have been advanced by him for the purpose of consolidating or buying up the debts of the company.

208 196. Q. Did you receive any money from Hay which you used in the construction of the road besides that advanced for the purchase of the judgments?

A. None that I remember. We had, as before stated, many dealings disconnected from the road.

197. Q. Did you receive any money through said Hay from Horace H. Day to be used in the construction of said road?

A. Never a dollar, to my knowledge; nor did I ever have any dealings with Mr. Day.

198. Q. Did not Mr. Day let you have, through said Hay, between $8,000 and $10,000, to be applied for the purpose of said road?

A. Never any money at all, that I know of. I never had any dealings with him.

199. Q. Did you not apply to Hay for money to purchase horses and omnibuses about the month of March, 1861?

A. I think not. I did apply to him for money to purchase omnibuses and horses when I expected him to carry out the agreement made between us, but this was prior to the vacation of the agreement.

200. Q. Did you know the late James McCollough, deceased, and do you know Robert L. Teel?

A. I knew McCollough very well. The other I knew slightly.

201. Q. Did you not apply to said McCollough and Teel, or one of them, to borrow money to be used in the purchase of horses and omnibuses in or about the month of March, 1861?

A. I do not remember.

202. Q. And did not said Hay come into the house of said McCollough at the time you were making the application for money to buy horses and omnibuses for said road and let you have $3,000 for that purpose?

A. He did not let me have the $3,000. Whether he came into that house at any particular time, I don't remember the circumstances.

203. Q. Did you not inform the said Teel at the time referred to that said Hay had let you have the money for the purpose of purchasing those horses, &c., as alleged?

A. I did not. I was very slightly acquainted with Teel; never had any dealings with him, and never was on such terms of intimacy as to tell him of my private matters.

209 204. Q. Was not said McCollough and said Teel engaged in the same business during the time you visited the house of the said McCollough and engaged in business with each other?

A. There was a gambling-house kept. McCollough was one of the parties, and Teel I saw there.

205. Q. Did not the working of the said Alexandria and Washington Railroad stop for the want of horses and omnibuses to bring the passengers from the south end of Long Bridge about the time referred to, to wit, the spring of 1861?

A. Never, that I remember. There were two lines of omnibuses in Alexandria, and I never had any difficulty in employing them if I paid them their charges.

206. Q. Have you now stated all the facts you know or information you have of any money received or collected on the part of said Hay for or on account of said judgments and claims, Exhibits A and C, as specified in your bill?

A. I have, as far as I remember.

(Signed) JAMES S. FRENCH.

Adjourned to Monday, 23d day of May, 1870, at 10 a. m.

*Hay.—Exhibit H. A. B., No. 1.*

[Stamp.]

This agreement, made this 6th day of December, A. D. 1867, by and between James S. French, of the town of Alexandria, Virginia, of the one part, and Samuel M. Shoemaker, of the city of Baltimore, Maryland, of the other part, witnesseth: That, in consideration of the payment of five thousand dollars by said Shoemaker to me, the said James S. French, the receipt whereof is hereby acknowledged, I do hereby assign, convey, transfer, and set over unto the said S. M. Shoemaker, or his assigns, all my right, title, interest, claims, and demands whatsoever in and to the property, stock, road, road-bed, franchise, and charter of the corporation known as the Alexandria and Washington Railroad Company, formed

under and by authority of an act of assembly of Virginia, passed February 27th, 1854, or any interest I may possess in or to the same or thereunder. And I do further agree to make such other and fur-
210 ther conveyance or assurance as may hereafter be required by said Shoemaker or his assigns. The foregoing assignment being for the following purposes, viz:

1. To secure the payment of five thousand dollars due said Shoemaker as an advance on the same, and,

2. For the purposes and objects set forth in an agreement bearing even date herewith between said French, Lenox, Shoemaker, Oscar A Stevens, J. Dean Smith, George W. Brent, and W. Jackson Phelps.

(Signed) JAMES S. FRENCH.

Witness:
J. P. CALLAN, as to J. S. French.

DISTRICT OF COLUMBIA,
*Washington County:*

I, John A. Callan, a notary public in and for the District and county aforesaid, do hereby certify that James S. French, who signed the foregoing assignment, appeared before me this 6th day of December, 1867, in the county aforesaid, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 6th day of December, 1867.

[L. S.] (Signed) JOHN A. CALLAN,
*Notary Public.*

VIRGINIA, ALEXANDRIA,
COUNTY COURT CLERK'S OFFICE,
*May* 25, 1868.

This agreement was received in the office, and, having been acknowledged before a notary public, and having thereon U. S. internal-revenue stamp properly cancelled, to the amount of five dollars, admitted to record.

Attest:
(Signed) T. TACY, *Clerk.*

(Endorsed:) We, the undersigned, do hereby agree and consent to the terms and conditions of the within assignment.

(Signed)

| | |
|---|---|
| O. A. STEVENS. | [SEAL.] |
| W. J. PHELPS. | [SEAL.] |
| J. DEAN SMITH. | [SEAL.] |
| GEORGE W. BRENT. | [SEAL.] |
| WALTER LENOX. | [SEAL.] |

211 JAMES S. FRENCH *to* SAMUEL M. SHOEMAKER. } Assigament.

1868, May 25. This assignment was admitted to record.
Test:
(Signed) T. TACY,
"*Clerk.*"

Recorded Liber Y, No. 3, page 405, and examined.
Test:
("Signed") T. TACY,
*Clerk.*

*Hay.—Exhibit H. A. B., No. 2.*

This agreement, made and executed this sixth day of December, A. D. 1867, witnesseth:

That the parties hereto, in consideration of the respective covenants and agreements herein specified, agree as follows:

First. James S. French and Walter Lenox covenant and agree to convey all right, title, and interest they may have in and to the Alexandria and Washington Railroad to a corporation to be formed as hereinafter specified; or to donate all of said interest to the common benefit of the parties hereinafter specified, should the said Washington and Alexandria Railroad Company be revived and the corporation by that name come into existence.

Second. When the parties hereto shall have agreed to reorganize, and shall actually reorganize the said Alexandria and Washington Railroad Company, or shall reorganize another corporation on the basis of the said title of the said French and Lenox to the said Washington and Alexandria Railroad, the undersigned, Oscar A. Stevens and W. Jackson Phelps, hereby agree to assign all interest they have to said corporation, such interest being as lessees of the Washington, Alexandria and Georgetown Railroad Company, or to hold the same for the exclusive benefit of the parties hereto, according to the respective interests in said corporation hereinafter specified.

Third. The undersigned, Samuel M. Shoemaker, on behalf of himself and the Adams Express Company, hereby covenants and agrees to aid the organization to be formed or reorganized as aforesaid by
212 money and credit; that is, to pay, or settle, or compromise all liabilities of the Washington and Alexandria Railroad Company, the liabilities of the lessees of the Washington, Alexandria and Georgetown Railroad Company, for procuring stock and materials for working said road, and all other bona-fide liabilities incurred by them on behalf of said company; and the said Shoemaker shall be substituted to all the rights and remedies of any creditor so paid off, discharged, or compromised with as aforesaid; any compromise, nevertheless, to be for the benefit of the parties hereto on the organization by them established or reorganized; said liens, to which the said Shoemaker may thus become entitled, are nevertheless not to be enforced or foreclosed until a reasonable time after all litigation in reference to the title of said road, and the regularity and legality of the corporation to be formed and reorganized by the parties hereto, shall have ended and been terminated in the court of last resort to which the same may be carried. And it is further agreed that, instead of the security above agreed to be furnished to the said Shoemaker in substituting him to the rights of any creditors whose claims he may pay or compromise, any other security may be given instead thereof upon which a majority of the interest in said corporation to be formed or reorganized under this agreement may determine. The net proceeds of the said company to be formed or reorganized under this agreement shall be donated to pay the interest and principal of the sums so to be advanced by said Shoemaker as aforesaid, except twenty per cent. of said receipts, which shall be divided among the parties hereto as stockholders, according to their respective interests.

Fourth. This agreement is to be carried into effect on the rendition of the decree of the circuit court of Alexandria County, in the case of the Washington and Alexandria Railroad Company against the Washington, Alexandria and Georgetown Railroad Company; and said com-

pany shall be then formed or reorganized with a capital stock of 3,000 shares, to be divided and distributed as follows:

| | | | |
|---|---|---|---|
| To the said | French & Lenox | 1,250 | shares. |
| " " | Stevens & Phelps | 850 | " |
| " " | S. M. Shoemaker | 500 | " |
| " " | J. Dean Smith | 200 | " |
| " " | Geo. W. Brent | 200 | " |
| | | 3,000 | " |

213 It is further agreed that said lessees shall be continued under said corporation as general manager and superintendent at the sum of $250 per month, until otherwise ordered by the board of directors, as to salary.

In witness whereof the said parties have hereto set their hands and affixed their seals this sixth day of December, 1867.

| | |
|---|---|
| WALTER LENOX. | [SEAL.] |
| OSCAR A. STEVENS. | [SEAL.] |
| J. DEAN SMITH. | [SEAL.] |
| GEORGE W. BRENT. | [SEAL.] |
| SAM'L M. SHOEMAKER. | [SEAL.] |
| W. JACKSON PHELPS. | [SEAL.] |
| JAMES S. FRENCH. | [SEAL.] |

Witness signature of J. Dean Smith and S. M. Shoemaker:
R. FRATER.
Witness to the signatures of George W. Brent, Walter Lenox, and Oscar A. Stevens:
JOHN STONE.
Witness signature of W. Jackson Phelps:
JOHN STONE.
Witness signature of James S. French:
JOHN STONE.

*Hay.—Exhibit H. A. B., No. 3.*

For and in consideration of the sum of ten thousand ($10,000) dollars cash in hand paid, the receipt whereof is hereby acknowledged, I, the undersigned, James S. French, hereby assign, transfer, grant, and convey to Robert S. Baldwin, his assigns, administrators, executors, and heirs, all my right, title, and interest, claim, and demand of every kind whatsoever, whether in action, possession, or expectancy, in and to a certain corporation known by the name of the Alexandria and Washington Railroad Company, whether the same is vested in me directly or indirectly as a corporator, stockholder, or otherwise, and the interest intended to be hereby conveyed, being three-fourths interest and
214 ownership in said corporation, subject to a lien of five thousand ($5,000) dollars in favor of one Samuel W. Shoemaker, which said lien the said Baldwin is authorized to purchase on my account or to pay and extinguish the same, as he may judge proper.

In testimony whereof, on this third day of April, A. D. 1869, I hereunto set my hand and seal.

(Signed) JAMES S. FRENCH. [SEAL.]

Signed and sealed in presence of—
G. E. SANGSTON.
J. L. BRENT.

[J. S. F. $10.00. April 3, 1869, rev. stamp.]

STATE OF MARYLAND,
*Baltimore City:*

On this third day of April, A. D. 1869, before me, the undersigned, George E. Sangston, notary public, duly commissioned and qualified in and for said State and city, personally appeared James S. French, the party who signed the foregoing instrument of writing, and acknowledged to me that he executed the same freely and voluntarily.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

{ GEORGE E. SANGSTON, NOTARY PUBLIC, BALTIMORE, MD. }

GEORGE E. SANGSTON,
*Notary Public.*

215 *Plaintiff's Exhibit H. A. B., No. 4, W. S. C., auditor.*

Whereas by deed of assignment of even date herewith the undersigned James S. French has and is about to convey to the undersigned Robert T. Baldwin, fifteen-sixteenths of all his right, title, interest, claim, and demand in and to the Alexandria & Washington Railroad Company, or to the stock or property thereof; and whereas said conveyance is absolute and unconditional on its face: now, therefore, for the purpose of declaring and setting out the true consideration and conditions of said assignment,

This agreement witnesseth, 1st, That of the ten thousand dollars ($10,000.00) acknowledged as the consideration of this purchase, four thousand dollars ($4,000.00) has been paid at the signing of this agreement, and the said James S. French hereby acknowledges the receipt thereof by these presents.

2nd. The remaining six thousand dollars ($6,000.00) are to be paid at any time after the sealing hereof at the option of said Baldwin, provided that said option be exercised at a time previous to the expiration of the thirtieth day (30th day) after the final decision of the court of appeals of Virginia upon the merits of the title of the said Alexandria & Washington Railroad Company in a certain suit instituted by the said company in the circuit court of Alexandria County, in said State, against the Washington, Alexandria & Georgetown Railroad Company and others; and a tender or payment of said six thousand dollars to the said French, or to his administrators, shall be deemed and held as the exercise of the option of said Baldwin, whether such payment or tender be made by him, his assigns, or on his behalf.

3rd. After the payment of said six thousand dollars, the said Baldwin or such persons as he may appoint with him, in proportions to be determined by him, and the said French, shall take the necessary steps to organize either the Alexandria & Washington Railroad Company or to form a new corporation in such manner and under such conditions as they or a majority of the parties in interest may determine.

4th. And the said French, in consideration of the transfer to him, when made by said company, or by any party authorized to make it, of all the sums and amounts that may be found due it by any person or corporation whatsoever, upon a settlement of its accounts, except
216 such sum as may be due to it from the United States, hereby agrees to waive and to release to the said Alexandria & Washington Railroad Company all the claims of him, the said French, whether as the assignee of judgments, or in any other right or capacity whatsoever. And it is further understood that all legal charges against the said Alexandria and Washington Railroad Company shall be assumed and paid by the said French, except such cash sums as he may in fact

pay after the date hereof, with the consent and approval of the said Baldwin, and not to exceed $500 for past payments by the said French, if the same be allowed by the said Baldwin.

5th. The said French hereby declares that the said conveyance of his interest is intended to and does cover all the rights of action acquired or remaining with him by virtue of a certain agreement, bearing date Dec. 6th, 1867, made with Samuel M. Shoemaker and others, whether the same be to annul or to enforce the said agreement, which it is not intended by these presents to otherwise affect, farther than may be necessary to assign whatever rights, claims, and demands that the said French might have in opposition to or under the same, if the same should be held valid to the said Baldwin, with full power to bring suits therefor, to settle the same by compromise or otherwise, it being the intention of the said French to confer on the said Baldwin by this article full power to settle with the said Shœmaker and the other parties to said agreement all the claims and demands of the said French against them, or any of them, arising either from said agreement or from any other cause whatsoever, on such *times* as to him, the said Baldwin, may seem just and equitable.

6th. And the said James S. French herein includes all the interest secured to him from his brother, George, which he has owned for more than fifteen years.

7th. And it is further mutually covenanted and agreed, that if the said Baldwin should find or be advised, that it may be to his interest to discharge a certain loan of $5,000.00 made to the said French by the said Samuel M. Shoemaker, and secured by an assignment of the interest of said French, that then the said Baldwin is authorized to do it in behalf of the said French, and in that event to hold as security therefor the whole remaining interest of said French not conveyed to him absolutely by this agreement, or by the deed of assignment and conveyance of even date herewith, with power to sell the same if the said French should fail for sixty days after demand to repay the same with interest and costs, either at public sale at such place as he the said
217 Baldwin may determine; provided, that no such demand of payment shall be made on said French for six months after said advance.

8th. It is further agreed and covenanted that if the said Baldwin shall fail to pay the $6,000.00 within the time specified, then this agreement shall be void, except that the said Baldwin shall hold the interest conveyed to him as security for the four thousand dollars ($4,000.00) paid on account of the purchase-money, which four thousand dollars are to be returned and repaid by the said French within twelve months after the final default of the said Baldwin.

9th. And the said French covenants, upon the request of the said Baldwin, to execute such other and further assurance as may be necessary or proper to secure or make perfect this conveyance to him the said Baldwin.

10th. And it is further agreed that if the said Baldwin shall acquire the interest of Walter Lennox, that the said French shall then become interested in the same to such an extent as to be and remain the owner of one-sixteenth of the whole of such interest as may be acquired by said Baldwin from himself and from said Lennox.

In testimony whereof we have hereunto set our hands and seals this 3d day of April, A. D. 1869.

(Signed) JAMES S. FRENCH. [SEAL.]
R. T. BALDWIN. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. L. BRENT.
G. E. SANGSTON.

It is the understanding of section (8th) eighth that the $4,000 is not to be repaid by Col. French in case his title be defeated and the election to take be not exercised, and I endorse this on this duplicate, as I have not the original before me.

J. L. B., FOR R. T. BALDWIN.

218 *Deposition behalf of J. S. French, by O. A. Stevens, before auditor.—Filed June* 27, 1870.

MONDAY, *May* 23, 1870.—Met pursuant to adjournment. Present, the plaintiff and defendant, and their respective counsel.

PLAINTIFF'S TESTIMONY.

OSCAR A. STEVENS, being duly sworn, says in answer to interrogatories as follows:

1st question. Have you any knowledge of the organization of the new railroad company called the Washington, Alexandria and Georgetown Railroad Company, after the purchase of the Alexandria & Washington Railroad by Alexander Hay in 1862? If so, please state what arrangement was made for the distribution of the stock of the new company; also, what was done in reference to the judgments against the old company, then held by said Hay and claimed as belonging to him.

(Question excepted to by Mr. Stewart.)

Answer. The company referred to was organized in May, 1862, by a distribution of the stock between five parties, viz., Alexander Hay, Joseph Thornton, Joseph B. Stewart, Silas Seymour, and Horace H. Day. Under the organization perfected, Alexander Hay was allotted about 1,570 shares, Joseph Thornton about 1,415 shares, the others about 5 shares apiece. I am not certain as to the exact figures, but can produce them. As to what was done with the judgments referred to in the interrogatory, I am unable to state. I have in my possession a paper in the handwriting, I think, of Alexander Hay, which gives a detailed statement of the debts, judgments, &c., of the old company. This paper I will produce if required so to do.

2d q. Was it not your understanding at the time, from Mr. Hay and the other parties, that the judgments aforesaid were put in by Mr. Hay as part of the capital stock of the new company, and that his stock was partly based on these judgments?

A. I am unable to say what the understanding was at the time. From papers in my possession, and the organization as perfected at that time, I am led to believe that the distribution of stock as then determined upon was based upon the representation of his being a judgment-creditor of the old company—to what amount I am unable to say. In the organization the books show no cash payment for stock on the part of any one denoted as a stockholder at that time. What I mean to convey by that answer is this, that the organization was perfected

219 upon the basis that the parties represented some interest connected with the old organization, irrespective of their cash payments for their stock subscriptions as shown by the books.

(Answer excepted to.)

3d q. Was it not then understood and agreed by Hay and his associates that the judgments held by him against the old company should be extinguished and satisfied upon the organization of the new company, and the distribution of stock, as you have stated?

A. I am unable to state what the agreement was at that time. It certainly would appear, from the papers referred to, that in giving Alexander Hay stock in the new company upon the basis of his being a judgment-creditor of the old, he should cancel or satisfy the judgment against the old company. Whether this has been done or not, I am unable to say.

(Answer excepted to.)

4th q. What amount in cash was paid on the purchase of the road by Hay? If any payment was made, please say by whom.

A. The books of the company give no evidence of the payment of one cent by Hay, or any one else, for the purchase of the road and franchise at the sale referred to, made by Stuart. If money was paid by Hay I am not aware of it.

(Answer excepted to.)

5th q. Was or not the iron taken from the old road sold; if so, when, and by whom? State all the circumstances.

A. The iron referred to was disposed of by Joseph B. Stuart to one Fox, of Pennsylvania, in the year 1861 or 1862. What I know of the circumstances is that the iron was removed by Fox or his employees from along the line of the road to Alexandria, and there loaded on board of vessels and sold by him to McManus & Co., of Pennsylvania, for about $8,000 or $10,000. There was an error in the weights of the iron, as returned by Fox, and I went to Pennsylvania to see him and to have the same corrected. I received from him something in the neighborhood of $1,000, (it may be over or under,) and which I paid to Mr. Joseph B. Stuart.

6th q. By what authority and in whose name did Mr. Stuart act in selling said iron?

A. I am unable to state by what authority he acted; I went to Penn'a by direction of Joseph B. Stuart.

220 7th q. Do you or not know that Mr. Stuart had a power of attorney from Mr. Hay, and that he acted in pursuance of the said power in making the said sale?

(Objected to as leading.)

A. I have seen a power of attorney, bearing an anterior date to that sale, authorizing Mr. J. B. Stuart to represent Mr. Alex. Hay's interest in the Alexandria and Washington Railroad, and I have no doubt he was acting under said power in some respects.

(Answer excepted to.)

8th q. How long did Mr. Hay hold his stock in the aforesaid new company? Do you know whether he sold the same; if yes, when, and for what consideration?

(Question excepted to.)

A. The original certificate was issued to him in 1862, afterwards cancelled and re-issued, less his pro-rata deduction for stock given to Jos. B. Stuart. The second certificate was afterwards cancelled and re-issued to him, less a pro-rata deduction for stock given to different individuals, whose names I cannot now give you. This cancellation and re-issue of

his certificate for stock continued from time to time until his certificate was reduced, I think, to 724 shares, which were embodied in one certificate.

This was in 1864, at which time I think he sold his interest to D. R. Martin; the exact amount he sold it for I cannot state; I was under the impression that it was over $70,000. It seemed to be the general understanding that Hay had made a pretty good sale.

(Answer excepted to.)

9th q. Have you ever heard Mr. Hay state what he received for his interest in said road?

A. I have heard Mr. Hay state that he had sold or parted with all his interest in the road; cannot state positively that he told me what amount he had received for the same.

10th q. Do you know in whose name Hay's stock stood after it was transferred by him?

A. The certificate for 724 shares referred to, will, I think, appear as cancelled in the old stock-book, and re-issued in the name of D. Randolph Martin. Whether the certificate was assigned to him or not, I am now unable to state. My impression is that it will appear assigned by Hay to Martin. Still I will not be positive without an examination of the books.

(Answer excepted to.)

221 11th q. Do you know whether or not, on the organization of the new company aforesaid, any of the debts of the old company were put in as capital by any of the parties associated with Mr. Hay? If so, please state what debts were so used, and by whom.

(Exception to question by Mr. Stuart.)

A. The books of the company show a credit in favor of different individuals who were creditors of the old corporation for something over $2,000. I can't state who were creditors of the old corporation for something over $2,000. I can't state positively what debts they were without reference to the books, but they are yet debts unpaid.

12th q. Did or did not Mr. Joseph B. Thornton make use of the coupon bonds of the old company in the way stated; and, if so, to what amount?

(Question excepted to, as leading and immaterial.)

A. I am unable to state from my own knowledge what interest Mr. Thornton represented.

13th q. Name, if you can, what debts of the old company have been paid by the new company.

(Excepted to.)

A. The books of the new company give no evidence, with but one or two exceptions, of the payment of any debt of the old company by the new company. The exceptions referred to are of minor importance.

14th q. What position did you hold at the time of these transactions, and what facility had you for knowing the facts?

A. I was book-keeper, recording clerk, and agent of the new company from its organization until I leased the road in May, 1866.

(Agreement here made between counsel for the witness to produce papers referred to in his testimony.)

Cross-examination:

1st question. Were you present at the organization of the Washington, Alexandria and Georgetown Railroad Co., after the trustee's sale in 1862? If yea, please state when and where the organization occurred.

A. I cannot say positively whether I was or not; think, however, I was, as the proceedings of said meeting appear on record in my handwriting. Where the meeting was held, I am unable to state.

222 2d q. Were not the proceedings of the meeting referred to, and all other meetings, while you acted as recording secretary, written out in the first place by Jos. B. Stuart, secretary, and transcribed into a record-book by yourself or John Stone, after the meeting adjourned?

A. In majority of cases such was the fact. There have been instances, however, where I have taken down the proceedings in pencil myself, read them to the board of directors, and then transcribed them to the record.

3d q. Have you any other knowledge of the matters you have stated, as to the organization of said new company, than such as you derived from the books of the co., which you have referred to during your examination chief?

A. My information is derived from the books of the company's stock and record books, conversation with the parties interested from time to time, and memoranda kept and entries made as the clerk, agent, &c., of said company.

4th q. Was not the new company formed after the trustee's sale in 1862, as stated, and after the road of the Alexandria and Washington Railroad Company was purchased by Mr. Hay?

A. My impression is that the organization referred to was agreed upon prior to the appointment of Joseph B. Stuart as trustee, and my impression is based upon papers which I have seen conveying this information, and bearing date prior to said sale. The sale was made in April, 1862. The stock was issued prior to the organization, and signed by the president, secretary, and treasurer before the meeting of the stockholders, (those claiming to be stockholders.) The new company was formed in May, 1862, as appears by reference to the records in stock-books of said company.

5th q. You have spoken of there being no money paid, as shown by the books of the new company, at the time for the subscribing of the stock of the same. Are you not aware that at such trustee's sale Mr. Hay became the purchaser and sole owner of all the stock to be issued by any new company formed, and had a right to issue the stock to whom he pleased, and as he pleased, without any formal subscription to stock by any one?

A. I am unable to state upon what basis the organization referred to was perfected. The books do not show that it was perfected upon the basis of a cash payment for stock. Whether Hay received cash

223 from the party forming the organization in May, 1862, or not, I am unable to state. Neither can I state upon what basis the organization was perfected, so far as the issueing of stock was concerned. The books of the company disclose no cash payment for stock, as before stated.

6th q. Do you know when Joseph B. Stuart was appointed trustee by the county court of Alexandria Co., Va., in the place of Walter Lennox?

A. I cannot give the date exactly; I think it was in February, 1862.

7th q. Do you not know that all transactions, receipts of property, and payments of money, which transpired after the appointment of said Stuart as trustee, and previous to the organization of the new company, in May, 1862, would be embraced in his report and papers, as trustee, and would not appear on the books in the formation of the new company?

A. I am unable to see what the trustee had to do with anything except the sale of the property and the money received at said sale. If Hay, in his purchase of said road, represented not only his bid of $12,500, but also an interest as a judgment-creditor, the books of the company should disclose the whole transaction. This they do not do, as before stated. The road, I think, sold for $12,500.

8th q. Do you know, of your own knowledge, of said Hay's ever receiving any pay or other benefit from the judgments referred to? If yea, please state how you know it and all about it.

A. As before stated, I am unable to state upon what basis the stock of the new organization was issued. If upon a cash payment, the books should show it; and I can only account for the issuance of stock upon the basis above referred to.

(Excepted to as irresponsive.)

9th q. In order to test your knowledge on the subject involved, I will ask you, if it were necessary for Mr. Hay to issue stock to any one, or for any purpose, after he had purchased said road, unless he choose to do so?

A. I am unable to state what is necessary, in the organization of a joint stock company, to conform to the code of Va. I can only state what was done as appears by the record and stock book, of said company.

10th q. If Hay ever received any pay for said judgments, with-
224 in your knowledge or information, was it in any other way than the benefit he may have derived from the stock issued to him, as you have stated, in the new company, and sold by him?

A. If, as I understand has been the case, after the organization of the new company, some of the judgments referred to have been marked "satisfied," at the instance of Mr. Hay, my impression would be that he realized on the same through and by the issuance of new stock in the new organization. I cannot state positively, however, whether this was the basis of the organization or not.

11th q. If said judgments were not satisfied by Hay in the manner you have stated, would they not still be valid debts against the said Alexandria and Washington Railroad Co., and against James S. French and Walter Lennox, as securities on the same?

A. I am unable and unwilling to determine the legal status of the judgments referred to.

Under the arrangement made with James S. French, in Dec. 1867, by Shoemaker and others, he, French, represented himself as the owner of said judgments by an assignment from Hay, the consideration of which was $5,000.

12th q. Did not said French, in the transaction you have referred to between himself, Shoemaker, and others in Dec., 1867, sell and transfer to said Shoemaker and associates all his right, title, and interest in and to said judgments upon certain conditions agreed upon? And please look at the two papers marked "H. A. B., No. 1," and "H. A. B., No. 2," forming part of the deposition of said French in this cause, and state whether they are true copies of the originals.

(Counsel for plaintiff objects to that part of question which asks the witness to state the effect of written contracts, the contracts being already in proof and admitted to be correct copies.)

A. The exhibits referred to are, I presume, correct copies, and, as one of the parties to the agreement, I should claim that Mr. French did convey all right, title, and interest he had in and to the Alexandria and Washington Railroad. The exhibits, however, speak for themselves, and the legal conclusion must be drawn by other parties.

13th q. As a matter of fact, at the time said agreements were made was not the said judgments claimed by said French in this suit referred to and intended to be included as part of said agreement, and the interest which he conveyed to Shoemaker and others?

225 (This question objected to, because it proposes to prove the meaning of a written contract by parol testimony.)

A. The subject of the judgments referred to were talked of by the parties to the agreement from 1866 up to 1867.

All the parties to said agreement, with the exception of French, claimed that he, French, could sustain his claim to the same, if entitled thereto, against the organization contemplated under said agreement. The contract speaks for itself. The parties to said agreement, with the exception of Mr. French, claim, I think, that the judgments referred to were included in the sale of his interest and that of Mr. Lennox to the organization contemplated under said agreement.

14th q. Did not the charge taken of the old iron on the road, as you have spoken of, by J. B. Stuart, and his sale of the same, occur after he was appointed trustee in place of said Lennox?

A. I am unable to state positively whether before or after.

15th q. Have you now stated all the information you have about the judgments involved in this suit, and any pay or benefit derived from the same by the defendant, Hay?

A. I have answered fully the interrogatories, but I wish to correct the figures that I have given in reference to the stock, after having seen the resume prepared of the same.

Adjourned until 10 a. m., May 24, 1870.

MAY 24, 1870.—Examination resumed pursuant to adjournment. Present, the plaintiff and defendant, with their respective counsel.

Agreement referred by Mr. French, plaintiff, in the answer to Question 192 in his cross-examination, produced by him, and herewith filed, marked "H. A. B., No. 4," (W. S. C., aud'r.)

Direct examination resumed:

(Paper marked Exhibit O. A. S. handed to witness by Mr. Stanton.)

1st q. Please state how you came into possession of this paper.

A. It came into my possession as an officer of the company, and was made one among the files of the company's office, and remained such.

226 2d q. In whose handwriting is it?

A. It is in Alexander Hay's handwriting, I think; it looks like his handwriting.

3d q. What is your belief?

A. I think it is.

4th q. Do you or not know whether this paper is one of the memoranda or calculations upon which the organization of the new company was made and stock distributed in 1862?

A. I am unable to state whether it is or not.

5th q. How did this paper get among the files of the company's office?

A. In separating and distributing different papers in the office, as was my custom, I presume it came into my hands, and it appearing to be a railroad paper was so filed by me, with other memoranda in relation to the distribution of stock, which were contained in the same envelope.

6th q. Can you explain the import of this paper, or tell to what business of the company it refers?

(Question excepted to.)

A. I can give no explanation of it, further than that heretofore stated.

7th q. You spoke of a power of attorney from Alexander Hay to Joseph B. Stuart; have you got the original of that paper, or do you know where it is?

A. I have not, and cannot state where it is. My impression is that it was filed in some one of the railroad suits in Va.

8th q. Look at the printed paper shown you, and say whether you can testify that it is a copy of the original paper.

(Question excepted to.)

A. I should think this is a copy of the original, which I have seen, and think it is a correct copy of the original instrument.

9th q. State where it is found in the printed record of the Alexandria and Washington Railroad Co. vs. Wash., Alex. and Georgetown Railroad Co., in the circuit court of Alex., Co., Va.

A. On pages 131 & 132.

(By agreement of counsel, a certified copy of this paper, to be made from said printed record by the auditor, is admitted in evidence, and it is herewith filed, marked Plaintiff's Exhibit W.

227 Also, by agreement of counsel, the original of Exhibit C is admitted to be signed and sealed by Alexander Hay, and that the paper is in the handwriting of James S. French; also that the original of Exhibits 4, 5, & 6, accompanying French's deposition, are signed and sealed by Alexander Hay, and in the handwriting of James S. French.)

Recross-examination:

1st question. You say the paper you have just presented, (marked Pl'tff's Exhibit W,) as being in the handwriting of Alexander Hay, comes into your hands as an officer of the Wash., Alex. and Georgetown Railroad Company. Please state what official position you held at the time the same came into your hands.

A. I was book-keeper and recording clerk for the company.

2d q. Was not that paper in existance long before you held any such position, or said company was formed?

3d q. If you know anything in truth about the origin of said paper, do you not know that it was a paper prepared some time in the fall of 1861, to be used, and was used, in an effort to settle the claim of the corporation of Washington on said road, and was copied from a paper in the handwriting of James S. French?

A. I know nothing of the paper in the light referred to in the interrogatory.

4th q. State precisely where you got that paper.

A. I have answered fully how the paper came into my possession, and will have to reiterate the same answer given to the interrogatory heretofore put in reference to it.

5th q. Are you acquainted with the handwriting of Jas. S. French?

A. Not sufficiently to swear to it.

6th q. Will you now hold in your hand the paper marked "Plaintiff's Exhibit O. A. S.," which you have produced, and say, as I read from the paper which I hold in my hand, if I do not give you in substance, if not in precise language, the words and figures in the said paper which you have produced?

(Plaintiff's counsel objects to the question, and especially the reading from any paper which is not exhibited to the counsel on the other side and made a part of the proof in the cause.)

228 A. The items you read to me are substantially the same as those in the paper I hold.

7th q. You have spoken of a power of attorney from Hay to J. B. Stuart; when and where did you get possession of that power of attorney?

A. I stated that the power of attorney was not in my possession; that I thought it was filed with some of the suits in Virginia. It was in my possession with other papers, and came into my possession in a similar manner to the papers heretofore referred to in my deposition.

8th q. That paper bears date early in January, 1862, and was executed to J. B. Stuart as the then attorney of Mr. Hay, and had no reference to the affairs of the Wash., Alexandria and Georgetown Railroad Co. Please state how or why it found its way into the papers of that co.

A. I am unable to account for the finding of the paper among the files of the office other than as hereinbefore stated.

9th q. When were you elected a director of the Wash., Alex. and Georgetown Railroad Company?

A. I was chosen a director of the Wash., Alex. and Georgetown Railroad at a meeting of the directors held at the office of the company in May, 1866, to fill the place of Mr. Stanton, who then resigned, and my selection as a director to take place after the adjournment of said meeting.

10th q. When were you elected secretary of said road?

A. I am unable to give the date. The record-books of the company will give full proceedings of stockholders' and directors' meetings. It is claimed by Col. J. B. Stewart that I never was legally elected, and I am able to produce his letter on the subject.

11th q. Did you ever, at any meeting of the directors or officers of said company, act as a director and secretary of the same?

(Question excepted to as irrelevant.)

A. As before stated, the records of the company will speak for themselves.

229 *Plaintiff's Exhibit O. A. S., W. S. C., auditor.*

| | |
|---|---|
| Bonds of co. guaranteed by city of Washington | $60,000 00 |
| Interest on same | 5,400 00 |
| | $65,400 00 |

Of this sum the city of Washington advanced $17,400 00.

| | |
|---|---|
| Due to city | 17,400 00 |
| To bondholders | 48,000 00 |
| | 65,400 00 |
| T. J. Walker | 550 00 |
| Ward | 50 00 |
| Purdy | 90 00 |
| Haines | 225 00 |
| Waters & Zimmerman | 550 00 |
| Edsall | 350 00 |
| Russell | 100 00 |

| | |
|---|---|
| Bailey | 105 00 |
| Studds | 100 00 |
| Windsor | 70 00 |
| Baker | 200 00 |
| Conner | 90 00 |
| Jameison | 150 00 |
| Boynton | 100 00 |
| Engineering | 650 00 |
| Davis & Ropert | 300 00 |
| Shinn & Co | 250 00 |
| Alexander & Orange R. R. Co., freight, &c | 800 00 |
| Lippot | 950 00 |
| Anderson | 16,500 00 |
| Fowle | 15,000 00 |
| Morris, Tanner & Co | 4,500 00 |
| Bond | 2,500 00 |
| Studd | 250 00 |
| Mason & Co | 8,000 00 |
| Windsor | 1,600 00 |
| Studds | 750 00 |
| Fees | 500 00 |
| | 120,780 00 |
| 230 Brought forward | 120,780 00 |
| Prindle | 1,000 00 |
| | 121,780 00 |

(Signed) O. A. STEVENS.

Adjourned to Monday, May 30, 1870, at 10 a. m.

231 MONDAY, *May 30th*, 1870.—Met pursuant to adjournment. Present, French, plaintiff, Hay, defendant, and Stewart, counsel for defendant; plaintiff's counsel not attending, the examination adjourned until Tuesday, May 31, 1870, at 10 a. m.

TUESDAY, *May 31st*, 1870.—Met pursuant to adjournment. Present, the plaintiff, and defendant, and plaintiff's counsel; defendant's counsel not attending, the examination adjourned until Wednesday, June 1st, 1870, at 10 a. m.

WEDNESDAY *June 1st*, 1870.—Met pursuant to adjournment. Present, the plaintiff, defendant, and their respective counsel.

The plaintiff rests his cause here.

*Defendant's testimony before auditor.—Filed June 27, 1870.*

JOSEPH B. STEWART being duly sworn, says:

1st. My name is Joseph B. Stewart; I am 47 years of age; I am a lawyer by profession.

2d. I have read the bill of complaint in this cause, and am familiar with the several judgments and claims against the Alexandria and Washington R. R. Co., James S. French, and Walter Lennox, a claim to which is made subject of this suit on the part of the said James S. French.

3d. I was well advised of the character of said judgments and claims previous to the year 1861, and I personally controlled the disposition made of the same after that period.

4th. Confining my statements strictly to that disposition of said judgments and claims, I state that early in the spring of 1861 Mr.
232 Hay was quite solicitous about his indebtedness against and lien upon the said railroad company; that when communication with Alexandria was interrupted, because of the political disturbances, Mr. Hay became much concerned about his capital invested in and about said judgments, claims, and road. So soon as the rebel army was expelled from Alexandria, Mr. Hay, through me, as his attorney, at once took steps to look after his interest. He did not then know that Mr. James S. French was permanently absent from Alexandria, nor did he know that the rolling-stock was removed by said French, or any one else, until informed of it by me.

5th. I learned this fact on visiting Alexandria as stated, and going to the depot of the company, I found no engines, cars, or rolling-stock of any description. Even the depot building, which was frame, was stripped and gutted of everything in the shape of iron, and showed symptoms, which soon proved true, of twisting out of shape and falling down.

6th. I enquired for the superintendent of the road, Mr. Boynton, but could not find him. The only persons from whom any information could be got were a number of people who stood around the building making complaints against the said company in a very fierce manner, for alleged unpaid wages, and dues for service and labor. I went to the county and circuit court clerk's office to look into the condition of the records, as to the judgments and claims of said Hay against said company; but it was locked up, and under guard of the military, and besides not having the means, I had not the authority to enter there, and nothing could be done then to further the object of my calling.

7th. I returned to the railroad depot, and was informed that under the special and personal direction of James S. French, a tram-road had been laid, and all the rolling-stock belonging to said Alexandria and Washington Railroad had been removed towards Richmond, so that I found no property of that description to look after, or take care of, as being subject to the judgments and claims belonging to said Hay.

8th. At the time this occurred, and some time before, I was well aware of the nature of the agreement between said Hay and French, as shown by the Exhibits B & C, filed with the bill of complaint, and knew the reasons and objects for which said papers were executed on the part of said Hay, as stated by him at the time.

233 9th. When I informed Mr. Hay of the real situation of matters connected with the said railroad at Alexandria, and among other things informed him of what I had learned from people in Alexandria, as to the facts and circumstances of the absence of Mr. French, he expressed both surprise and regret that Mr. French had treated him just in that way, in view of many matters which he mentioned.

10th. I, at the same time, informed Mr. Hay that the iron was being stripped from the old road-bed in many places, and carried away, and advised him to consider some means to prevent it; but he said he could not unless he could get possession of the road in some way to protect the interest of himself and others.

11th. I made several visits to Alexandria connected with this matter, and was informed that the turnpike had been taken possession of as being rebel property, pursuant to information filed or given by James T. Close, and that a similar step was proposed as to said railroad.

12th. I went to see Mr. Close, and endeavored to induce him to desist from such a course, showing him that the rights of other people, not in the confederate lines, were involved, and that his action would result in injury to the vested rights of such persons. He declared that he knew the people in whose names said property stood, (that is, both the turnpike and railroad,) and by whom it was held, and that he should not change his course, as he knew that all the ostensible owners of said property were in the rebellious States.

13th. There was then no court of any species sitting in the county of Alexandria, nor any means of getting civil process for any purpose that could serve to protect or control the interest of said Hay.

14th. I advised said Hay of the peril that surrounded his judgments and liens on said road, in view of this threatening seizure and confiscation of said road by the military, and advised him to see the Secretary of War, the Hon. Simon Cameron, with whom I knew he was personally acquainted, and try if he could not prevent a further seizure and confiscation of said turnpike and railroad.

15th. Mr. Hay did see the Secretary of War, and had several interviews with him, and I know that he got the Secretary to agree that the said turnpike and railroad should not be confiscated to the exclusion of the rights of said Hay, or any other loyal owner or creditor; but
234 declared on all occasions, that after the said Hay and other loyal owners or creditors of said railroad and turnpike were protected, that not a dollar should ever enure to any party or parties who had gone South and remained in the confederate lines.

16th. Further action was deferred, in hopes that a civil court would be convened in Alexandria County, so as to take legal possession of said road, by the process of such court, but such did not occur, and in the mean time a negotiation was opened with the authorities of the city of Washington, to purchase the said railroad under its deed of trust, and a proposition was made by said Hay, and accepted by Messrs. Wendell, Fisher, & Brown, a committee appointed for that purpose by the board of aldermen, and a bill ratifying such sale and purchase was passed by said board of alderman.

17th. After this action, and pending the further proceeding on the part of the corporation of Washington, Mr. Hay entered into an arrangement with the Secretary of War for repairs of said railroad, upon certain stipulations not necessary to mention here; but for the performance of which Mr. Hay was to become personally bound, if so required.

18th. Pending these negotiations, I made a careful examination into the deed of trust, executed in favor of the corporation of Washington, and came to the conclusion that it was absolutely null and void, ab initio, and that no valid title to anything could pass under it, for the reason that the corporation of Washington, under its charter, had not the power to make the contract a guarantee, which it did, and on account of which said deed of trust to Joseph H. and A. Thomas Bradley was executed, and I so advised said Hay.

19th. About this time, which was then about the 16th of January, 1862, I was called on at my office by one Joseph Davidson, who handed me a letter, the original of which I now hold in my hand, and a copy of which I make a part of this deposition, marked "J. D. S., No. 1," after comparing the same with the original, which I now ask the auditor to do, the said original being in the handwriting of, and signed by said Davidson.

(The copy compared with the original, and found to be correct.)

20th. This was the first time I had ever seen said Davidson, and

I informed him I would take proper notice of the subject-matter of his letter.

235 21st. Mr. Davidson then informed me that said letter was dictated by Mr. Stone, then a prominent member of the Washington bar, and desired me to confer with said Stone, who was the legal adviser of himself and the said Thornton, in and about the matters referred to in said letter.

22d. I did see Mr. Stone, and he and myself went to Alexandria and saw Mr. J. Lewis Kinzer, a member of the Alexandria bar, and said Stone, and Kinzer, and myself went to the clerk's office of Alexandria County, Va., to see the condition of the records.

23d. We found the clerk's office still locked up and guarded, and I went to the military commander, and after some delay got an order to open said clerk's office, and to use force if the key could not be found.

24th. The said key could not be found, and a corporal's guard forced open the office, and remained while Messrs. Stone, Kinzer, and myself examined the records. Each of these gentlemen, Messrs. Stone and Kinzer, agreed with me that the deed of trust to secure the corporation of Washington was not valid, and that the deed securing the coupon bonds, as represented by Mr. Davidson, in his letter handed to me, of the 16th of January, 1862, as aforesaid, was valid.

25th. During all this time Mr. Hay was in Philadelphia; was not present at any of these interviews, and took no part whatever in them. He had not, up to that time, been advised of the letter of said Davidson delivered to me for him, and had no acquaintance whatever with said Davidson, or with a Mr. Thornton, and others referred to in said letter.

26th. I summoned Mr. Hay to Washington, and informed him of the advent of Mr. Davidson into the affairs of said railroad company, and handed Mr. Hay the letter of Mr. Davidson, aforesaid, and also informed him of the conclusion arrived at by said Stone, Kinzer, and myself, as to the effect of the deed of trust represented by said Davidson, and the subordinate position of the said judgments and claims belonging to said Hay to said deed of trust.

27th. Mr. Hay stated that he had no other directions to give than such as his legal and equitable rights in the premises would suggest, and left me to pursue my own judgment, as authorized under his previous power of attorney now in evidence in this cause, and returned to Philadelphia.

236 28th. After this time the conferences between Mr. Stone as attorney for Davidson, and Kinzer as attorney for Fowle, Snowden & Co., and myself, were almost daily, and sometimes twice a day, as to what was best to be done. It was the advice of said Stone to said Davidson that he should at once take steps to cause a trustee to be substituted in the place of Walter Lennox, who was the trustee named in the deed of trust represented by said Davidson, and who was then absent in the South.

29th. In the mean time a civil court was convened in Alexandria County, Va., and said Davidson, as soon as he could do so, acting under the advice of said Stone and Kinzer, presented a petition to the county court of said Alexandria County, praying, for reasons stated, for the appointment of a trustee in the place of said Lennox. I, on the part of said Hay, made no resistance to this motion, as I saw none I could make, or had the right to make.

30th. At the time these steps were taken, said Hay was not present, and took no personal part in the same. It was intended that the said

J. Lewis Kinzer should be substituted as trustee in place of said Lennox, and the papers were so prepared, until the day of the appointment, in open court, Mr. Kinzer refused to take the oath necessary to his acting as an attorney for any purpose in said court, and his name was stricken out, and an order drawn, putting my name in the place of said Kinzer's.

31st. Previous to this there had been a good deal of negotiation between said Davidson and Joseph Thornton, with whom I had now become acquainted, and had introduced said Hay to these parties during his visit from Philadelphia, after the said 16th of January, 1862, and before which time he had never seen either of the said parties.

32d. In all these negotiations, I aimed to make the best use I could of the judgments and claims belonging to said Hay, knowing their subordinate position to said deeds of trust. As I am aware, the papers and evidences of said negotiation have been put in evidence in the record of a suit between the Washington, Alexandria and Georgetown Railroad Company, and the corporation of Washington, by the plaintiff, in his personal examination in this cause.

33d. I shall only refer to said papers, and allow them to explain themselves.

237 (Agreeed here between counsel that Exhibits Nos. 2 & 3, filed with the amended bill, in the case of The Alexandria and Washington Railroad Company vs. The Wash., Alex. & Georgetown Railroad Company, marginal pages 837 to 843 of record in that case, are hereby made exhibits, and copies of the same will be filed marked "Exhibit No. 2, amended bill referred to."

W. S. C., *Auc'r.*

"And exhibit No. 3, amended bill referred to."

W. S. C., *Auc'r.*

And also the deposition of Joseph B. Stewart, in the same record, commencing at marginal page 950, and ending at marginal page 989, including the exhibit marked Z, a certified copy of which deposition and exhibit is filed in the record of the present case, from page 40 to 63, inclusive, of the exhibits to French's original deposition.)

34. Mr. Hay took no part whatever in procuring the appointment of any trustee, and he depended wholly upon the result of future developments, as to what course he would personally take in the matter, so far as his interests were concerned; and for the more full details of these proceedings I refer to my deposition, above agreed to be submitted as an exhibit in this cause.

35th. All stipulations entered into on my part, as the attorney of Hay, with the said Davidson, or other parties representing any of said deeds of trust, were to protect said Hay as far as possible against the superior position and prior rights of the parties protected by said deed of trust, as against the judgments and claims held by said Hay.

36th. If any one else had purchased the road, at the deed of trust sale, as they had the right to do, all of such stipulations would have fallen through. The purchase of the road by said Hay, as shown in my former deposition referred to, was made as a common bidder, as any one else had the right to be, and any benefit Hay was ever to derive from his said judgments and liens, depended upon his becoming the purchaser of said road, or, in other words, his purchase was one of absolute self-defense.

37th. There never was a dollar paid for or on account of said judgments and claims to said Hay, except as I will now state.

38th. After the deed of trust sale was made, and after the company formed pursuant thereto, and known as the Wash., Alex. & George-

238 town Railroad Co., had got their charter from Congress for bringing their road into the District of Columbia by a bridge across the Potomac, I made a contract with Mr. Hay for the purchase of all his stock in the said company, amounting to about 720 shares, at 80 ct's in the dollar, and I had also a contract for the purchase of the interest of Joseph Thornton, at about the same price. Failing to meet the larger debt due to D. Randolph Martin, for money loaned to said new railroad company, it became necessary to enter into a negotiation with him for getting time on said debt.

39th. In consummating this agreement, it was insisted on by said Martin that he should take my purchase from Hay. This was finally agreed to on my part, and I transferred my agreement with Hay to Martin, and requested Mr. Hay to deliver to said Martin the stock, which he did.

40th. Mr. Hay did not have any personal negotiation with the said Martin, and though in general terms the remark has often been made of Hay's sale of stock to Martin, it was but to describe in general terms a transaction, when, in real truth, the sale was from Hay to Stewart, and by Stewart to Martin.

41st. The nominal amount paid by Martin to Hay was about $56,000, but less than this amount was actually received by Hay, because of certain obligations he agreed to, and did discharge.

42d. This money was derived from no other source than the stock he, Hay, received from the new company formed under said deed of trust sale, and no part of it from any money collected from the Alexandria and Washington Railroad Company, or James S. French, or Walter Lennox, the obligors in said judgments and claims.

43d. After the purchase of said Martin from me, I deemed it proper that said judgments and claims held by said Hay should be marked "satisfied," and caused it to be done, as I considered he had no further interest to guard or protect, and that it was due to myself and others that all such judgments should be satisfied, and but for this the said judgments would to-day be an existing debt against the said Alexandria and Washington Railroad Company, the same having been revived, and the new company formed under said deed of trust sale declared void, by the courts of Virginia, in a suit brought by and in the name of the plaintiff, James S. French, as president of said Alexandria and Washington Railroad Co., and who is now in the possession of the same by the order of said courts of Va., and I state, of my own personal
239 knowledge, no collection was ever made of said judgments and claims, or benefit derived from the same by said Hay, other than as above stated.

44th. I further state that the Exhibit W, filed as a part of the deposition of Oscar A. Stevens, on the part of the plaintiff in this cause, was a paper copied from a memorandum in the hands of Alexander Hay, about the month of October or November, 1861, and duplicates of said paper were used by me in the negotiations with Messrs. Wendall, Fisher, and Brown, as a committee of the board of aldermen, as hereinbefore stated, when said Hay was proposing to purchase the lien of the city of Washington on said road, and had no reference whatever to any disposition made, or to be made, of the said judgments or claims.

45th. I further state that said Oscar A. Stevens was not present at the organization of the said Wash., Alex. & Georgetown Railroad Co., after the deed of trust sale, in May, 1862, and did not see said paper for some days thereafter, when I gave him the proceedings of said organization's meeting to copy, he then occupying a clerical position in the office of J.

B. Stewart and H. L. Stevens, attorneys at law, the said H. L. Stevens being the father-in-law of said Oscar A. Stevens, and all the pretensions of said Oscar A. Stevens of a knowledge of the organization of said company is pretended on his part.

46th. I further state that my action and report, as trustee, formed, and was intended to form, no part of the proceeding of the organization of said company, and hence do not appear on the books of said new company when formed.

47th. And I further state that, as a matter of fact, the whole stock of the said new company to be formed under said deed of trust sale vested in said Hay by virtue of his said purchase, and it was not necessary, in fact or in law, to open books of subscription, or pay any specific sum for stock, as was assumed to be omitted in the deposition of said Stevens, given for the plaintiff in this cause.

48th. And I further state that the old iron which was on the Alex. & Wash. Railroad, or such portion of it as was left, was taken possession of by me, as trustee, after my appointment as such, and was sold for between $7,000 and $8,000, all told, and was accounted for by me in my report as trustee, the details of which, with all the papers, were handed to the treasurer of the new company, Joseph Thornton, and by him to his successor, Charles H. Stewart, in whose hands I last saw the
240 same; but they, in no respect, form any part of the record of the new company; but that said Hay never, directly or indirectly, interfered with said old iron or its proceeds. No one but myself, as trustee, handled the same; but I do know that had it not been for the personal exertions of Alexander Hay, and the confidence reposed in him by the then Secretary of War, that old iron, railroad, judgments, and everything else pertaining to said railroad and turnpike would have been absorbed and swept away, as confiscable property, under the military orders and regulations then ruling the day.

Cross-examination by Mr. Stanton:

Q. Please look at the Exhibit No. 17, of French's deposition, purporting to be a certified copy of your affidavit in the care of Horatio R. Riddle and others against James S. French, in the U. S. circuit court for the district of Va., and state whether the facts therein stated are correct, according to the best of your knowledge and belief.

A. I do look at the said paper, Exhibit 17, and knowing that I gave an affidavit in the proceeding referred to, have no reason to doubt, from anything apparent, that the said Exhibit 17 is a correct copy of said affidavit, and, without critically examining the same, believe the facts referred to are, in substance, the same as in my deposition filed in this cause, and the exhibit forming part of the same, as to amounts and expenditures, that the statements are true, according to my best knowledge and belief, as to the subjects to which they apply; but so far as would bear upon the use and appropriation of the judgments and claims belonging to said Hay, and involved in this suit, my deposition, now given, must be received as to enlarge and specifically apply the matters of fact known to me, and which would have been set forth in said affidavit, as now stated, had there been occasion for it.

(Signed) J. B. STEWART.

241 *Defendant's Exhibit, J. B. S., No. 1, W. S. C., auditor.*

WASHINGTON CITY, *January 16th*, 1870.

SIR: I observe in the National Intelligencer of this morning, that you are about to purchase for yourself and others the rights and interest of

the corporation of Washington in and to the Alexandria & Washington Railroad.

It is proper for me, representing the owners of certain bonds for $30,000, bearing interest, to inform you that a mortgage of said road & co., to secure said bonds, was duly executed by the company, and recorded in the proper offices in Alexandria Co., Virginia, and in the county of Washington, District of Columbia.

This mortgage was recorded in Alexandria County prior to the mortgage to secure the corporation of Washington.

For this and other reasons, the owners of said bonds claim to have a prior lien on said road, &c., and will hold the same liable for said amount of $30,000, with interest thereon.

Very respectfully, your ob't servent,

JOSEPH DAVIDSON,
*Agent for Benjamin Thornton and others, owners, &c.*

To ALEXANDER HAY, *Present.*

Adjourned until Thursday, June 2, 1870, at 10 a. m., Mr. Stewart still on the stand.

242 THURSDAY, *June 2d*, 1870.

Met pursuant to adjournment. Present, plaintiff, defendant, and their respective counsel.

By agreement of counsel, it is admitted that the letter of Alexander Hay to J. H. B. Lartrobe, esq., of Baltimore, dated March 28th, 1861, and the reply of said Lartrobe to said let'r, dated April 2d, 1861, were written at their respective dates; but the complainant, French, objects to the introduction of them as testimony on the ground that they are wholly immaterial.

Said letters are marked Def'd't's Exhibits (J. H. B. L., 1) and (J. H. B. L., 2.) W. S. C., *Aud'r.*

This case is here closed on both sides.

(Signed) JOSEPH B. STEWART.

243 FRENCH *vs.* HAY.

*Copy of letter from P. H. Watson, Assistant Secretary of War, to Hon. James W. Grimes, Chairman of the Senate Committee District of Columbia, and of letter written by M. C. Meigs to Hon. E. M. Stanton.*

WAR DEPARTMENT,
*Washington City, D. C., June 23rd*, 1862.

SIR: The Secretary of War having understood that a bill to amend the charter of the Alexandria & Washington Railroad Company was pending before Congress, in which legislation was proposed affecting injuriously the interests of the Government in its military operations, he procured a copy of that bill, and submitted the same to the Quartermaster-General, to report whether the public interest would or would not be affected injuriously by its passage, and that officer has made a

report, a copy of which I am directed by the Secretary herewith to enclose.

I have the honor to be your ob't serv't,

P. H. WATSON,
*Assistant Secretary of War.*

Hon. JAMES W. GRIMES,
*Chairman of the Senate Committee on the District of Columbia.*

244 And the report of the Quartermaster-General referred to in the foregoing letter reads as follows:

QUARTERMASTER-GENERAL'S OFFICE,
*Washington, D. C., June 21st*, 1862.

Hon. E. M. STANTON,
*Secretary of War.*

SIR: 1st. I have the honor to return the House bill, No. 468, which you have referred to me, with directions to report whether the public interest would not be prejudiced by its passage.

2nd. House bill 468 proposes to extend the charter of the Alexandria & Washington Railroad Company, so as to authorize the extension of the road from the south end of the Long Bridge, "as the same is now constructed, along Maryland avenue, to the Capitol grounds, and across Pennsylvania avenue, along First street, to Indiana avenue, and thence to the Baltimore & Ohio depot," said location to be subject to such changes as future alterations of the Capitol grounds or of streets and avenues may require.

3rd. The bill also proposes to confer the right "to make such additional structures or passage-way along either side or over the Potomac bridge, as in the opinion of the Commissioner of Public Buildings may render the same safe for public use," but does not oblige them to do this in any given time, or under any penalty.

4th. It also proposes to require the company upon whom these privileges may be bestowed to construct such draws as shall correspond with those now in use on the said bridge, and afford equal facilities for navigation on the Potomac.

5th. The act is also to take effect from its passage.

6th. The President having taken military possession of railways, under his general authority, a railroad track has already been constructed at the cost of the Quartermaster's Department along the very route proposed in this bill. Draws have been constructed on the Long Bridge, and have, when injured by passing vessels, which has happened several times already, been repaired at the expense of the United States.

245 7th. The whole of the Alexandria & Washington Railroad, from Alexandria to the south end of the Long Bridge, found abandoned by its owners, has been repaired at the expense of the United States, and connected with the railroads leading south and west and north.

8th. The only trade of any importance which passes these roads, or is likely to pass over them till they cease to be indispensible to the daily supply of our armies, is the transportation of Government supplies.

9th. In my opinion it would be injurious to the public service to transfer the jurisdiction over these roads, now held by the War Department, to any private company. It would lead to declarations and claims for damages.

10th. The road and draws have already been constructed, and the

road stocked by the United States, and no sufficient reason occurs to me to transfer the rights and privileges pertaining thereto to a private company.

11th. After the restoration of peace there will be trade enough, independent of the Government service, to justify the expense of erecting another bridge alongside of the present Long Bridge. There certainly is not now. Any draw is an obstruction to navigation, and every one added will be an additional obstruction.

12th. Thus far during the war the railroad communication across the Potomac at this point, though important, is not really so important to the public as the navigation of the river, and much inconvenience and delay have occurred from the existence of a single draw. It has several times been damaged by the collisions of vessels, thus interrupting for the time both the railroad and river traffic at great expense and inconvenience.

13th. The railroad is necessary for the transfer of rolling-stock from the Washington to the Virginia railroads; but goods and troops are generally forwarded by water.

14th. When peace is restored, and the War Department is no longer in absolute need of this road, a bill providing for a permanent construction of these railroads north and south of the Potomac, in the neighborhood of Washington, will doubtless pass; such bills have already engaged the attention of Congress, and surveys have been made by the Government itself. (See report of the Interior Department, of surveys by Alfred L. Reeves, and also by the Baltimore & Ohio Railroad Company.)

246 15th. To pass this bill at this time would have the effect of embarrassing the administration of the War Department, by conferring upon a private company privileges interfering with rights already enjoyed by the Government, and increasing the cost to the public service.

I am, very respectfully, your ob't serv't,

M. C. MEIGS,
*Quartermaster-General.*

247 *Final decree.—Filed Dec.* 14, 1870.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY } 1,337. Equity docket 9.

This cause came on for final hearing upon the equities of the case as made to appear in the bill, answer, replication, proofs, and exhibits, and master's report, and was argued by counsel, and the court being fully advised in the premises, finds the equities of the case with the defendant, and that the plaintiff was not "entitled to the account prayed for in his said bill;" and the court orders and decrees that so much of the interlocutory order in said cause, dated October 21, 1869, as finds the plaintiff was entitled to said account be rescinded; and it is ordered, adjudged, and decreed that the bill be dismissed, and that the defendant recover of the plaintiff his costs to be taxed.

248 *Appeal to general term.—Filed Dec.* 21, 1870.

FRENCH
*vs.*
HAY. } No. 1337. Eq. doc. 9.

The clerk will enter appeal to court in general term from order of December 14, 1870, dismissing bill.

(Signed) F. P. STANTON,
*For French.*

Appeal is entered as directed this 21 Dec., 1870.
By the clerk.

*Decree in general term.—Filed June* 7, 1871.

FRENCH
*v.*
HAY. } No. 1337. Eq. doc. 9.

This cause having been heard, upon the record of the special term, and been argued by counsel on both sides, and being fully understood: it is thereupon ordered, adjudged, and decreed that the decree of said special term, from which the appeal to this court was prosecuted, be, and the same is hereby, affirmed with costs.

249 *Appeal to the Supreme Court of the U. S.—Filed June* 12, 1871.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY. } No. 1337. Equity doc. 9.

The complainant, by his solicitor, F. P. Stanton, comes here now into open court, and prays an appeal to the Supreme Court of the United States from the decree of this court pronounced on the 7th instant; and the said appeal is allowed.

*Order fixing penalty of appeal bond.—Filed Sept. 2nd,* 1873.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY. } No. 1337. Eq. doc. 9.

On motion of James Hughes, esq., solicitor for complainant, (appellant,) it is ordered that the penalty of this bond for appeal to the Supreme Court of the United States herein be, and hereby is, fixed at two hundred and fifty dollars.

(Signed) D. C. HUMPHREYS,
*Justice.*

250 *Appeal bond.*

In the supreme court of the District of Columbia, the 2nd day of September, 1873.

JAMES S. FRENCH
*vs.*
ALEXANDER HAY. } No. 1337. Eq. doc. 9.

Know all men by these presents that we, James S. French, Lewis McKenzie, and M. D. Corse, are bound unto the above-named Alexander

Hay in the sum of two hundred and fifty dollars to be paid to the said Alexander Hay, his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated this 2nd day of September, 1873.

Whereas the above-named James S. French hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named James S. French shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JAMES S. FRENCH. [SEAL.]
M. D. CORSE. [SEAL.]
LEWIS McKENZIE. [SEAL.]

Sealed and delivered in presence of—
W'M S. BALL, as to M. D. Corse & James S. French.
E'D L. HOUGH, as to L. McK.

Approved Sept. 3, 1873.

D. C. HUMPHREYS,
*Justice.*

251 DISTRICT OF COLUMBIA, *to wit:*

To ALEXANDER HAY:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein James S. French is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness, A. B. Olin, justice of the said supreme court of the District of Columbia.

1873, SEPT. 15.—Service of citation acknowledged.

A. G. RIDDLE,
*Sol. for A. Hay.*

252 *Clerk's certificate.*

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 15 day of September, 1873.

R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Assistant Clerk.*

(Indorsement on cover:) No. 476. James S. French, appellant, vs. Alexander Hay. Dist. of Columbia, sup. court. Filed 17th September, 1873.

# SUPREME COURT OF THE UNITED STATES.

## No. 191.

JAMES S. FRENCH, APPELLANT,

vs.

ALEXANDER HAY.

CERTIORARI AND RETURN.—FILED 13 JANUARY, 1875.

AGREEMENT OF COUNSEL AND ADDITION TO RECORD.—FILED 15 JANUARY, 1875.

1 THE UNITED STATES OF AMERICA, *ss*:

[SEAL.] The President of the United States of America to the judges of the supreme court of the District of Columbia, greeting:

Whereas in a certain suit in said supreme court between James S. French, complainant, and Alexander Hay, defendant, which suit was removed to the Supreme Court of the United States, by virtue of an appeal agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"The omission from the record of paper exhibits of the said appellee from and including No. 30 to and including No. 66; (see record, pp. 104 & 106;) also two papers marked defendant's exhibits, (J. H. B. L. 1,) and (J. H. B. L. 2;) see rec., p. 129."

You therefore are hereby commanded that searching the records and proceedings in said cause you certify what omissions you shall find to the said Supreme Court of the United States, so that you have the same together with this writ before the said Supreme Court forthwith.

Witness the honorable Nathan Clifford, senior associate jus-
2 tice of said Supreme *Supreme* Court, the twelfth day of January, A. D. 1874.

D. W. MIDDLETON,
*Clerk Supreme Court U. S.*

Answer of the justices of the supreme court of the District of Columbia to the foregoing writ of certiorari appears by the schedule hereto annexed.

R. J. MEIGS, *Clerk.*

(Indorsed:) 1337. Eq. doc. 9. French v. Hay.

3 In the supreme court of the District of Columbia, January 13 1875.

JAMES E. FRENCH
*v.*
ALEXANDER HAY. } In equity. No. 1337. Docket 9.

In obedience to the writ of certiorari hereto annexed, and by command of the justices of the supreme court of the District of Columbia, to whom said writ is addressed, I have inspected the record of said cause, and hereby certify to the Supreme Court of the United States copies of the papers of said cause alleged to have been omitted in the record heretofore certified to the court, to wit, copies of "paper exhibits of the appellee," Alexander Hay, "from and including No. 30 to and including No. 66;" also copies of "two papers marked defendant's exhibits J. H. B. L. 1, and J. H. B. L. 2," the same being to this writ annexed.

Witness my hand and the seal of the supreme court of the District Columbia.

[SEAL.] R. J. MEIGS, *Clerk.*

4 EXHIBIT HAY, No. 30.

I hope the past week has enabled you to arrange satisfactorily some of the matters which were perplexing you all so much, and trust to hear you are well and cheerful. I have not heard from you since the 1st. I wrote you in reference to the R. R.; all so far works as well as could be wished. Sealed proposals are invited by advertisement; yours, however, will be accepted. You will see the Baltimore and Ohio R. R. are asking of Congress to let them extend their road to the Long Bridge, and build by the side of it, at their own cost, a bridge to connect with our road. This we like much, because in doing this they have abandoned the Georgetown route as impracticable, and so say, and also a scheme they had to run a branch of their road on the Maryland side of the river down opposite Alexandria and connect with a ferry.

Our policy for the present is to get them as fully committed to the Long Bridge route as possible. They stand no chance of getting such a privilege without our consent, none whatever. It shows the value of the Long Bridge route, and that if we had it, they would probably furnish the means to make the connection, and as their object is to connect with the roads at Alexandria, which can only be done through our road, we can by uniting with them probably make some satisfactory arrangement. The Baltimore and Ohio R. R. Co. cannot buy our road, they are expressly prohibited; but even take the worst view, and give the Baltimore and Ohio R. R. Co. the right to extend their road and build a bridge to connect with us, it would add greatly to the value of our road.

But the first thing to do is for us to secure the road under the sale. This leaves us free to do what is best with the best enterprise of the day. You will see a notice of the sale to-day in the Baltimore Sun, in which it is stated that the officers of the road desire its sale because it does not pay expenses. I want the public to think as badly of it as they can, and want the enterprise to apperr to be surrounded by insuperable difficulties. You must trust to me in this matter, for I cannot explain details in a letter; I think of it all the time. It will all be right; prepare the means and notify me.

I was disappointed in getting the gaiters the day named, the party being sick; will get them in a few days and send them. The avenue bill, in which Lenox is a party, and over which they have had such a fight, will be up to-day; its friends are confident of its passage.

Best wishes for peace, quiet, and prosperity.

5 EXHIBIT HAY, No. 31.

NOV. 19.

I telegraphed you this morning I would be on, and again this evening that I could not come on. On going to the depot to start, I found the train lies over to-morrow (Sunday) in Philadelphia, and that I could not get to New York before Monday morning. I was disappointed very much, as I had many things to talk about, and am also anxious to see what you wanted to show me. Write and let me know; I am anxious also to hear the result of the trial, but cannot believe it possible they will grant the injunction.

The papers sent me by express reached me to-day, and will somewhat compensate for my disappointment by occupying me to-night; I wil read them over carefully. Journal case all right. M.'s cases you will get,

I suppose, Tuesday fortnight; I will see about them Monday; also the shoes; I had not time to-day. These will take if gotten up well; I can suggest a better fastening, I think, than I have seen, but I wish you and D—— to show some taste in the matter; you left me entirely in the dark as to what you have new. Describe it and let me put it in shape. I never heard from you about the leggings; since that I have seen that they are made of gutta-percha. Is this elastic? They say so in advertisements; if it is you can hardly get a patent for them, as suggested. If you could, a great many could be sold.

I am all the time working at railroad matters, and hope you will all soon get your matters straight enough to carry it through. I would like very much to have spent to-morrow with you; I think we could have hatched up something. I shall be more disappointed than you are, if Nelson decides against you.

I am much obliged to you for the grape-catalogue. Be good enough to put me down or yourself down for two or three dollars' worth, to insure my getting them.

Now, as to the decision, that I fear will keep you in suspense some time; it will take some time to prepare it; but leave no effort spared to get the record, in the case decided by Judge Giles, before the Supreme Court. I cut the enclosed out of a Virginia paper. Find time to write a little more fully. I can meet you and ——— in Philadelphia next Saturday night, if desirable, but I hope soon to see you here.

*Copy of slip above referred to.*

"From Charlestown we learn that the India-rubber case on
6 trial in that city has been decided like all the others, in favor of Mr. Horace H. Day. Mr. Day will recover an immense fortune from those who have infringed his patents; in every place where he has contested the case the decision has been in his favor, and the amount of India-rubber goods manufactured and in use is very great."

EXHIBIT HAY, 32.

APRIL 21ST.

I returned last night from Baltimore, where I had been to see the president of the B. & O. R. R. Co., with a view to harmonize our interests so as we could work together. The bill, as reported, I did not fully approve; I was much pleased with the visit, and got back too late to write you by last night's mail. Having been absent I am much engaged now, so excuse short letter. Now, whether the councils will sell or not I can't say; the trustees reported to the last meeting of the councils that they (the council') had no right to prescribe the terms of sale, which they did in the resolution they passed. Now, whether to delay any sale or have one are matters for us to judge of; I think we can get the city debt assigned to you, embracing what has been paid, and as well as what is to pay, at the price we agreed; now, most of the other questions asked are matters for you and I to agree upon consultation. The best thing for me to do is to try and have nothing done until we can confer fully. The Baltimore road coming in to build the bridge has somewhat changed matters, and may prevent a sale. I can't say, but think we can manage to control it, and have it done or not done; if the bill passes, and the B. & O. R. R. Co. build the bridge, the city will require its whole debt.

This is a general view of matters, and I think the bill, to make the connection, will pass. I have not called upon Cameron or Durkee yet; I called upon Cameron, but found he had moved, so did not see him; then went to the Senate to see him and Durkee, but found that they were going to take a recess, so did not see them, preferring to do so at another time.

Besides, I want some amendments made to the bill reported for the B. & O. R. R. Co., and I have not made up my mind exactly what they are, or, rather, what it is my interest to require without endangering the bill by complicating it. I should like very much to see you as soon as convenient, and am very much interested to hear how your matters are going on.

7

With kindest wishes I am yours, &c.

You see the R. R. matter has, for the present, swallowed up everything else.

Think often of you and your troubles.

EXHIBIT HAY, 33.

APRIL 10TH.

MY KIND FRIEND: I am just from the Senate Committee of the District, where I have had a full discussion of the rights of the A. & W. R. R., in connection with the petition of the Baltimore and Ohio R. R., to bridge the Potomac at the Long Bridge and the Orange and A. R. R. The amount is the rights of the A. & W. R. R. are fully recognized, and will be fully protected in any bill that is passed. The O. & A. offered to buy, and the Baltimore and Ohio offered to make any satisfactory arrangements with us. It would take pages to detail all that passed; if we had the road unincumbered now we could sell on a large advance of the sum offered for it. The connection must be made, and can only be made through our road. The Baltimore road proposes to make the expenditure necessary for the connection, and arranged satisfactorily with us. This must be incorporated in the bill; this of itself would multiply wonderfully the value of our road. No time for further details; my friend, we must get hold of the road, not a cent can be lost, but it is a property increasing every day in value, and can be turned into money whenever required. To make the Baltimore road make the outlay and give us the advantage is a great point.

The road can fight its own way. To fail to get hold of the road I should regard as the greatest mishap that ever befell me. If the trouble is in the January payment, we can arrange for that, I think. I have a great deal to say, if I had time; may good luck attend you. The Orange R. R. is very anxious to get hold of the R. R., but if we can comply with your offer we will get it, or—nobody.

8 EXHIBIT HAY, 34.

12.

Your favor, my kind friend, was received yesterday, and burnt as soon as read, as requested. Do the same with mine. I sympathize very deeply with you and D in your troubles, and very often think of you, and take it for granted you have the best advice, and are doing all you can. I trust you will get safely through. I was very much disappointed in not seeing you at the time named; but I know well your punctuality, and knew, before receiving your letter, you had good reason for not com-

ing. But, my friend, I should like much to see you, and if you cannot come on, I must go to N. Y., not to trouble you in any way about my affairs, for this is not the part of friendship, for I would not have you to embarrass yourself. If you could readily comply, I know you would, and therefore I am content. The trouble is now to get the matter from before the council, so as to stave off any sale which we invited. I do not exactly know how, but take it for granted I will do it in some way. I have staved off any action, waiting to see you. Another difficulty is as to the judgments standing in your name. This prevents me from making any move to get help. These things, if I could see you, we could arrange in some way I, like yourself, did look forward with so much hope for peace and a competency; but there is little ahead now, except constant litigation, with the hope of keeping alive to await events.

Expecting the sale to be made, I stopped the road when the through travel was transferred to the steamboat, because the omnibusses followed the through travel, and I had none to put in their place. I then did not care how bad affairs looked. Since then I have not run a train—now several weeks—and so matters stand. So I would like much to see you when it will suit your convenience.

With the shoes, I had a great many disappointments; never did get but two pair made, and I had the fastenings put on them at home, as I could not have it done as I wished elsewhere. The fastenings, which answer far better than any I could have made, cost one cent or less a dozen; and the two pair of gaiters I have which open on the sides, are, I think, very pretty, more stylish than those in use. I have been trying to get a couple of pair made which open on top, and hope to do so. I am very sure if you will have enough made, you will find a very ready sale. Shall I keep them for you, or send them to you, or wait for the other two pair?

Hope for the best; and good luck attend you and yours, is the wish of your friends. Burn all, as I do.

9 EXHIBIT HAY, 36.

Yours of yesterday rec'd. The proposition we agreed upon, and was stated at the time to the councils, was that you would purchase the Washington lien, which carried with it the road and all its franchises, privileges, running-stock, &c., and pay for it the sum for which the corporation is still bound. This is $42,000, payable annually in 7 years—$6,000 per annum, the interest payable semi-annually, and to put up as security for a compliance with the contract, $10,000 in State bonds, or satisfactory security. I am afraid the road is growing greatly in importance; but particulars cannot be given in a letter; possibly the sale can be postponed. But of all things, I would like to see you. The fear now is, that the road will become too valuable for our purposes; but come and see me. Apart from my matters, I would like to see you. I have no friend in whose welfare I am so deeply interested—none who has manifested such generous confidence and true friendship as you have; and I want to know how you are affected in what has occurred. So come and see me—come to my house. I am very solicitous to know that you are in no way worsted in your matters.

The R. R. matter is to me what the Judson matter is to you, and has swallowed up everything else. The shoes, I suppose, are done. I have a great deal to talk about when I see you.

With kindest wishes, I am yours, &c.

EXHIBIT HAY, 37.

Since I mailed a letter to you, a few minutes since, Lenox has been to see me, and tells me confidentially that, beyond all question, we can carry a bill through the lower House for continuing our R. R. over the bridge. He knows this. I can't give particulars, but am certain it is so. He thinks we can carry it through the Senate. This I think you can manage. With this connection through the city, it will pay at once tremendously. If we had it, we could sell out at once for enough. To pass it through the House will cost something, but not much. You see the anxiety and struggle for a passenger-railway here, how valuable it is regarded, and yet it would nothing like equal this southern link. The charges from depot to depot would be 50 cts., what it has been and is, and a vast quantity of freight would pass over it. The bill giving the use of the present bridge would provide for a permanent one; and you can see as well as I can the value of a franchise which makes this a monopoly constantly increasing.

Now reverting to the turnpike matter, if you can't raise the means to control it, as I suggested in my last, suppose you try to buy it one and two years, or 6, 12, and 18 months; enable me to buy, so as to cut off all possibility of trouble from this source. This out of the way, we would then have to control the Washington lien. This can be done, L says; certainly, he has a great many personal friends and time, and long time, possibly can be had on this; but if we had this lien, we would at once close, and wipe out everything.

With a connection across the river, the income would be so large that on the bonds of the company you could at once raise every dollar that would have been expended, and repay yourself, leaving the road increasing in value and capable from its own resources or income of putting it in first-rate condition. Now, with the connection across the river, this is capable of mathematical demonstration.

Our cars have very nearly as much as they can do on the through trip, and the business seems increasing. Do the best you can, and write me fully, or come on before Saturday.

The lobby members are delighted, I am told, with the state of things. Burn this.

EXHIBIT HAY, 38.

JAN. 2D, '60.

MY DEAR SIR: To-day the express-package made *it* its appearance, and never did anything arrive more opportunely; accept my kindest thanks for it. If you have not sent the balance, do not if it inconveniences you much. I did not think when I wrote last I could postpone it in any way, but can for a time, I find. Your own matters have given you so much trouble, I would not add to it in any way. I do trust the new year will bring peace and prosperity, and with it an end of litigation.

I want to see you very much; when will you be on? How comes on J. & G.? What will they do next?

EXHIBIT HAY, 39.

"Received yours with J.'s advertisement. I think you told me Day controlled or could control Joslyn's patent. Don't one of Marcy's cases cover it? My impression is that it does, and that M was the prior

inventor. If under Joslyn elastic cloths can be made, they can I suppose under Marcy. Why not get up a company to manufacture elastic-cloths, under M , D having nothing to do with it, but you keep the control, and advertise to make elastic cloths, or to sell to others to make them; would not this show Judson that he could get no monopoly, even if after expensive litigation he were to succeed; or if Day can control Joslyn patent, offer to stop all manufacturing under it, if he will at once settle fairly and quit litigation. I will see to M.'s other matter. I want to see you very much about R. R. matters. We are now carrying all the through travel, and will continue to do so. All the R. R.'s to New Orleans have united with me in asking for the privilege of crossing the Long Bridge. A bill will be introduced in the Senate in a day or two. I have gotten a little more time on the turnpike matter.

There is not a piece of property in the U. S. of more certain value than the R. R., and none that I know of out of which so much can be made; it now forms a part of the through line from Maine to New Orleans; I have much to say about this. Why don't you seek out G.'s son, and show him the inevitable result of Judson's course? He will see that his prospects are to be ruined as well as his father's and that his father is lending his name to J , and helping him to accomplish it.

EXHIBIT HAY, 40.

Accept my kind thanks for the package.

I read last night the bill you sent, with a good deal of interest, knowing how deeply you are interested in it, and I really see nothing in it to cause you any alarm. But, on the contrary, I think it best for you that they have taken this step. Because knowing you have good counsel, and believing your case will be properly presented, I do not see how it is possible for the judge, if he be even a tolerable lawyer and upright, to grant the prayer of the plaintiffs. Admit nothing, and call for proof of everything.

Many of their exhibits have nothing whatever to do with
12 the legal merits of the case, and are merely lugged in for effect.

Of course D will put in his answer, as exhibits, the contracts and releases of Hutchinson and Runyon, Ford & Co. and Onderdonk & Letson, not filed with the bill, and the admissions of G in his application for an extension, referred to by Judge G , and also what proof you can command, as to the meaning of shirred, and the different kinds of goods so designated, with these things; the application must be overruled, and no appeal will be taken from it, and if it should, it will amount to nothing, and the true merits of the controversy will be decided on the record presented to Judge G , when carried up.

I therefore confidently expect to hear that the motion for the injunction has been overruled. What you have to fear is that they will procrastinate what apparently they are so anxious now to have a decision. If you have a spare copy of D.'s answer to the bill, send it, I should like to see it.

With us there could not be two opinions as to overruling this application for injunction, whatever may be the final decision on the merits. I therefore think this must be the decision with you, and as such will greatly help you—good luck.

EXHIBIT HAY, No. 41.

JAN. 5.—Yours of yesterday received. The interview you mention

was most remarkable, and why sought, since it terminated as you say, I can't tell. He has no doubt done all he can, and can do no more than he has. He does not seem to be making headway with the courts. The Supreme Court will set you right, and I trust the new year will prove auspicious, and bring peace and quiet. As to hooks and eyes, &c., you can have them in any shape you wish; the first sent are readily bent as you wish. The latter sent I would try; they are very pretty, and can be made separate or together. They will hold, I think, and fasten readily. The only doubt is that in place of the strip of steel you may have to use separate eyes. But in the case referred to, where a pair of gaiters were fixed with the common hooks and eyes, I inquired this morning and learn they answer very well, are readily fastened and stay so; they are more clumsy, by far, than the last sent, which will be close and not hurt the feet. But let this matter wait until we are more at leisure; they can be made in any desired form. I am as busy as you are; the R. R. takes every spare moment. The river blocked up. I am
13 making some headway. This is a great matter to control, and great success certain, if we had it. This is so great a chance I shall use every effort to hold on.

The T. P. stock is to be sold the 11th inst. I think with $7 or $8,000 we could control entirely.

This would leave only the city of Washington matter. Is there any chance to do it? I expect to close to-morrow or next day a contract making the road a link in the great southern line. I wish I could see you to talk about matters. The M case does not come up, I think, until about the middle of this month. I reckon it will be right; if not, the court will make it so. Has it become important? Burn this, and all others.

EXHIBIT HAY, No. 42.

Your favor of yesterday received this morning. I sympathize sincerely in your troubles, and hope you will weather them. As I know you are doing everything that can be done, I have nothing to suggest.

As to the shoe-fastenings, try them. On a pair worn for nearly two months, the common hook and eye answers admirably, so says the wearer; is easily fastened, and, on account of the elasticity of the rubber, never comes loose. Those you have are far better than the wire hooks. Try them, and do not conclude they will not answer until you give them a fair trial. Your other matters also try as soon as you can.

As to Joslyn's springs, is he selling many, or can money be made by them? Why not make them under Marcy's patent? What think you of this suggestion? Which, keep to yourself. The India-rubber springs as now made are blocks of rubber of the same size all the way from top to bottom, and it requires a certain weight to compress them or make them spring, so that with a car full of passengers, they will ride easily, but not with a few passengers. I am inclined to think a spring made as suggested herein would have an advantage over others, and would be patentable. For illustration, make your spring of 4 disks or circular blocks of India rubber, with a hole in the centre for a bolt, as usual; but in place of making them all equal in circumference, make them all of the same thickness, and the 1st, say, 5 inches across; 2d, 4; do., 3d, 3 do.; 4th, 2. The idea being to diminish the rise of the blocks of rubber from the bottom to the top, in this way the same quantity of rubber will give more height of spring, and the upper or small blocks will
14 spring under a light load, and all of them under a heavy load. May be you could trade this with Joslyn, if you don't like it.

I am obliged to buy a lot of rubber springs very soon, and want to try this form.

When is it likely you will be on? The R. R. is growing in importance. Hope to see you soon. See draft for spring.

EXHIBIT HAY, 43.

I received the advertisement in the Tribune; these are annoyances you will get rid of after a while. Bear them as best you may, and hope for the best.

The spring sent is made right; its value experiment will test. I think it will ride easier than any now used, and the only question is as to how it will last; in my note in reference to these, I requested you to have eight made; but if this is the only one you have finished, be good enough to have only 4 made, but of different dimensions from the one sent, not wider, and with no alterations in the tubes, for the one sent is made right; make the 4 (or have them made) 2 ft. 6 inches long between the tubes, or even three ft. would probably be better; with these the car will spring like a buggy; make them strong enough. I should think by corrugating a long strip of canvas wide for the spring, and passing it around the tubes and cementing it together, you could make it as strong as you please, and withal not costly.

But your workmen will know better how to make it than I do. At present, from the sample sent, I can arrange them to answer, I think, admirably; so have 4 made as requested, and they shall have a fair trial. The 4 springs will have to support from 2 to 2½ tons in common use.

I saw L after hard work, and see a committee of the council' has been appointed to take the matter into consideration; so he is moving in the matter. This was done Monday, but I have not seen him since.

Yesterday was a terrible day, raining all the morning, yet the road carried, I suppose, full 1,400 passengers without the slightest accident.

It is growing in favor against all obstacles. I called to see your shoemaker, he had made you a neat pair of gaiters, but he does not understand what you are at; he has made them to button, &c., but the buttons don't suit. These people not understanding what you are at, conform to the present style as near as can be; put in gores on both sides; they are only required on one.

If I can get some fastenings (which I ordered to be made) the same as I sent you, I will try and get him to make a pair as I think they ought to be. But as you have so much to bother you, suppose you send me some neat fastenings—I don't want any better than I sent you—and rubber for the gores, sufficiently wide and neat, or fine, and let me have you make, say, 1 doz. or 1½ doz. ladies' gaiters, and send them to you to have placed in a show-case in some suitable store; I will get a good workman and give the matter my personal attention; you will probably have to pay a little more for them, but I will see that they are made as directed.

Now this is the cheapest and easiest way to give them a fair trial; have one or two dozen best ladies' gaiters made, and you will be, I think, delighted with them; and if not, then incur no more expense or trouble. But to do this, you must have neat fastenings, and the best material for the gores. If you will do this I am confident they will take, and will have you made a neater article than any you have seen. When will you be on?

EXHIBIT HAY, 44.

MY DEAR SIR: I received yours yesterday, informing me of your fresh troubles and annoyances. They are very perplexing and hard to bear, but I have faith that all will yet come right. I regret very much to see you all so annoyed, and think of your perplexities very often. What has become of the answer you were to file, to break up patent? Has J read it? The things sent have not yet arrived; will get them, I expect, to-day, and at once try them.

The R. R. matter was under advisement when I got your letter; I have tried so hard to bring this about that I expect to succeed; have so represented your ability and influence to do what you undertake, that the city will, I think, like to have it in your hands, but we cannot know positively what they will do before next Monday night. It will be a great affair to get it, and we cannot fail to make it profitable.

For Heaven's sake be not dispirited about your matters, and hold yourself ready to comply, if the councils acquiesce, which I trust they will. The way in which I have represented you to those—I have told you would become the purchaser—makes them think that with your aid we will get a good bridge.

16 EXHIBIT, HAY 45.

Your kind favor of the first gave me great relief. I hope things will turn out yet better than you hope for.

You have struggled so bravely, and both you and Day have borne yourselves so manfully, that I still hope for your complete success.

Keep me apprised, for your affairs interest me as much as they do you; and if the kind wishes of myself and wife and children could avail, you would have no trouble. I was disappointed in getting the fastenings and the gaiters made, but I am promised two pair certainly to-morrow evening, which I will send you by express. I still think very well of them. The R. R. matter has occupied all my thoughts almost. The board of aldermen and the common council have now both passed a bill directing the sale of the A. & W. R. R.

It is what we started, but not exactly in the form we wished; but that we could not control; it however amounts to the same thing. They would not undertake to sell privately, concluding they had not the power to do so. They were satisfied with your offer backed by our wishes, and the bill now authorizes the road to be advertized for sale, for 30 days, from the 2d of this month, and invites sealed proposals for it; it does not say it shall be sold to the highest bidder, because they desired to accept the offer we made, and will do so, I think, even should other bids exceed the one we made. We will without accident get it on the terms we proposed.

Now I dislike the delay, as we are fearful to apply for the use of the bridge until this matter is settled. But then I am satisfied, as it gives you more time to arrange for it.

The bridge matter, Lenox says, is very favorable, and he is very confident of success before the committee and House.

The avenue railroad bill, in which he is interested, will pass, to the exclusion of others, without doubt; everything about the R. R. looks encouraging, and all hangs on the sale by the city; prepare for this, and apprise me at once. I regret very much to add to your present troubles in any way, but after moving in the councils, I could not stop it, or I would have delayed it; all depends on you now.

With kindest wishes for success in all your matters,

I am, yours, &c.

Will write again in a few days.

17 EXHIBIT, HAY 46.

DEC. 31ST.

MY KIND FRIEND: Yours of yesterday I received this morning, and a short time since telegraphed you nothing has been received.

I am sadly disappointed; but not only that, but should I not get it in time, it will be ruinous. Your letter makes me very sad, for there seems to be some strange mistake; that I would receive it in time you told me, and I regarded it as certain as that the sun would rise. Some days ago I received a letter saying you had directed it to be sent me from York on Thursday; in your letter of yesterday you say you did send me on Tuesday, (750.) In the multiplicity of your matters, you have confused dates or persons. Now that it will come I have no doubt, but time is to me everything; I will not trouble you with the causes of my being so urgent; they are as peremptory as they can be; in my struggles to keep command of the road I have appropriated the sum I wished to use for my children, because they could wait for better times, the other could not; so my friend add that to the amount, (750,) and let me return it after a little. After the first week in January, with this help, I can see ahead. For Heaven's sake attend to this at once. Neither letter says how the remittance was made, whether by draft or express.

I had fondly hoped the fastenings sent would have pleased you; I thought them very pretty. I think they will answer, but it is an easy matter to make a pair of G , and try them; on the G you would not place them as close together as on the strip sent; the elasticity of the rubber will keep them secure. But suppose the objection stated by you is a good one, it amounts to nothing, for it would only be necessary to use separate eyes for each hook, like the eyes enclosed, only with the opening across, in place of lengthwise; all of which can be made with dies, and cut separately; besides these, other fastenings may be employed.

Now if to this it be stated, that hooks and eyes will not answer, cannot be fastened, or will come loose, I reply I had a pair of G made for a lady, with common hooks and eyes, the rubber gore divided in the centre, which she has worn for some month or more, and is much pleased with them, and has had no trouble, they never coming unfastened.

I have seen nothing so stylish as those sent. As to what H
18 said about the bearings, I think you will find he is mistaken. I hope you will be on soon, as I wish very much to see you about sundry matters. Write at once.

EXHIBIT HAY, 47.

Your favor of yesterday,(27,) received this morning. I wrote you yesterday I would like to know what E. had done, to see if something could not be suggested. Does it make an air-tight varnish or paint? The patterns for the bearings must wait a little, as I am too much engaged to attend to them; I think well of them, and, moreover, that the patent can be sustained. I do not know to what case H. refers, but should like to know, and expect he will find a patentable difference between them. The case was well described, and will, I think, prove to be new. When you come on we will see about the bearings.

The gaiters I would stamp on the lining inside, I think; it can be readily done. If the lining be dark, stamp with white paint, or something suitable, making it different from the color of the lining.

I am still busy with R. R. matters. The Orange road has been nego-

tiating with me to transfer to my road their passengers. It is a very important matter. The connection with Lynchburgh will be completed Jan. 9, which will give a complete railroad connection from here south.

They offer to close on my own terms, for 90 days ; and I think they will make it permanent. I require them to contract for six months, which will break up the boat-line so completely that they will be obliged to continue to connect with me, which is their interest. If we owned the road, we could sell to them at a good profit. This I hope we can bring about, and am struggling in all I do for time, with the hope of arranging it.

The Turnpike stock is again advertised to be sold Jan. 11th, next. I see no chance of further procrastination. If we could buy only enough shares to control it, it would be very desirable ; 260, the whole being 500, would be sufficient. I think by management, 260 can be bought or $7, 000, terms of sale 10 per cent. down, balance in 4 months. I hope, however, soon to see you, and to find with the new year your troubles will end and prospects brighten.

Is not J—— getting tired of law-suits ?

19 EXHIBIT HAY, 48.

BURN THIS. Your favor of yesterday received to-day. 3d. Why not send on your application for journal-boxes ? I have heard nothing of it, and therefore suppose the papers and drawings have not been sent on. I would attend to this at once, or somebody will get ahead of you. Shall be pleased to hear from you with reference to the G.'s, L.'s, &c., &c. Will read the bill carefully as soon as it comes on.

Don't you like their coming before a new man ? All, I think and hope, will turn up right.

Now, I dislike to trouble you about little matters ; but I want 3 or 4 pear-trees, and not the dwarf, but good-sized trees, and those esteemed best in N. Y., where they have better pears than I ever saw elsewhere ; also 4 plum-trees,(best,) 2 magnum bonum, 2 apricots, and 2 nectarines, (best.) In all, 4 pear-trees, 4 plum-trees, 2 apricot, and 2 nectarines.

And also 4 choice grape-vines, but not Isabella, nor Catawba, nor black *hamstrung*, for these are to be had here.

Don't you know somebody you could trust send me the above articles ? I mean the articles to be what they are professed to be.

I would like much to have the above, and I know of no friend so likely to get them as yourself, if you have time. If you can do it without trouble, I wish you would ; but if too busy, say so, and I will try in another quarter, as I want to plant this month. I don't think the dwarf-trees pay for the trouble ; they have too little fruit. The steamer Mount Vernon, a new line, leaves New York for Alexandria once a week, regularly, and I think on Friday or Saturday.

I saw Dr. A. this morning in reference to M.'s cases. He says he cannot pass them without a disclaimer of Chas. Goodyear's patent of 1844, re-issued Dec. '49, in two parts ; one for a fabric made of India-rubber. I tried to show him that the disclaimer was not necessary under previous decisions of the office ; but he insists upon it, and I see no objection to entering the disclaimer, for if Goodyear's case covers it, it will do so any how, and if it does not, to disclaim it amounts to nothing; all these cases will turn on the question whether a sulphuret is sulphur or not. Besides, you have in the other cases substantially what is claimed in this. M———y will be able to understand and see to what extent this will effect him, and so will D. Now, if these cases, amended as

proposed, give nothing, refuse to amend at all at present, and let them lie in the office; you can call them up at any time, even years hence, or you can withdraw them, and get back $20 in each case.

I do not see how these cases are very valuable, bearing in mind what M—— already has. I would not take less than he already has. These cases have been called up out of turn, and, if you choose to amend as suggested, will be passed at once.

EXHIBIT HAY, 49.

Before this reaches you, you will have received the telegraph. Your case is very plain; send on a statement of the facts you mention, sworn to, and corroborate them by others, as far as you can; let M. ask postponement of day of hearing, on account of the facts stated, and want of time to complete taking his testimony; this will be granted, no doubt; but if it should not, the facts will cause the testimony of T, to be thrown out, and if not, and the case should be decided against you, which I do not expect, still, you have a certain remedy in an appeal to the court. There the judge would certainly overrule T.'s testimony; it can only annoy on the facts stated; the testimony of T. cannot be used; but the hearing will be postponed, giving you ample time to complete your testimony.

Place your case, therefore, in the best condition you can. The evidence of no witness taken, as was T.'s, can be received by a court. Make your counsel note what he objects to, and also except to all improper questions or answers. Dr. A. is still absent, but you cannot be defeated by such conduct; case will be as you wish.

I suggest that M. make the application, as I do not remember whether your power of attorney was filed in the case, or in which case; if necessary, refer to it as giving the power in each case, which would cause the examiner to look for it in the patented cases; I think it was filed in some of them. Any papers received Monday, by 12, will be in time. J. is getting desperate.

EXHIBIT HAY, 50.

JAN. 9.

Your favors received with documents in express package. I will see to M. I should think the case will prove strong enough; it is a matter you can't hurry; it will, no doubt, turn up right.

I see nothing you have to fear in the case before J.; they will not appeal from his refusal to grant the injunction, and I suppose, though he may hear argument, he never will grant it. J. has now, no doubt, done all he can, whatever threats he may make, and has gained nothing. I expect to hear he has compromised. Why don't you ask him if he expects to live always?

His deposition is a most remarkable one, in the face of the testimony filed. Can't you rebut this by direct and positive proof, in addition to that filed?

What would G. say if compelled to testify? I want much to see you. When will you be on? It is thought the House will organize this week. I am all engaged in R. R.

EXHIBIT HAY, 51.

MONDAY NIGHT, 21ST.

I telegraphed twice to-day and also wrote. The patent that I suppose to be the one was already recorded, and too late to retain. It was

too late even on Saturday, but could have been done before it was recorded. Your letter of this morning has excited me as much as you and D. are, and I have thought of little else. In a day or two I will read it up.

Persons not skilled in its application will not be apt to know its value, so I hope you will be able to get the whole. Remember me, for I know nobody who works as hard as myself but you and D. I hope this will not be the limit of your good luck. You and D. have certainly enough on hand to keep you awake. I would keep this last matter quiet for a while, if you get it, so as to examine it in every aspect, before going to work. The true principle is embodied in the shoes, but the buttons are not the things. I will see that you get the patent, and then you will have time to get them up properly.

I have a fastening to suggest which I think is patentable, certainly better than any in use, and if I am right about it, is of itself very valuable, while it will suit the gaiters exactly. I will make a rough model and description, and send it on in a day or two. It carries out D.'s idea of small matters. Something that everybody must have; but at present you would forget it among more exciting things. M. I will try and have fixed this week. I am still at work about R. R. matters, struggling to keep matters as we want them.

22 If necessary I will come on any night and stay a day. I wrote you about interferences, &c. Do let me hear all about this new matter, for I shall think of nothing else. This latter matter comes in good time to enable you to wait for the decision quietly. Good luck in all matters. Burn this.

EXHIBIT HAY, 52.

I wrote you yesterday; since then I received the Herald, containing J.'s short card; the long one I had received before. I would sue him at once, and also Dickerson. I hate to trouble you about other matters when you have so much to perplex you, but would it not be wise, if you can, to purchase enough turnpike stock to control it? This would enable you to wait your own time. Now, may be this can be done for $4,000, certainly, I think, for $5,000; may be for less than I have named, if sold as before, (10 shares with the privilege of the whole.) By getting some one to bid who will not be suspected, and not letting him purchase any unless he can buy enough to control, and at the price you name. Get enough to control it, and no trouble could come from this source. You can get back more than its cost, even should you abandon the R. R. project. Let me hear from you before the 11th, which is next Saturday.

EXHIBIT HAY, 53.

Your two favors of yesterday, the 4th, just received; also the Herald, a day or two since. The article there amounts to nothing, except to annoy.

I see you are very much annoyed by J. His conduct at the sale was shameful. Such things could not be done with us. Perhaps your course is best; a different one might operate against you. The papers you ask for, send to the commissioner for , and the examiner who had charged of the case will forward them. A different course will be irregular. The reasons for appeal were sent you a day or two after you left. I hope you received them; they were ample; get them and read

the note accompanying them, and you will see what is necessary. I hope you received them. I have been disappointed daily on calling at the National, in not seeing you, and should like much to see you before the 11th, as that is the day of sale for T. P.

23 The R. R. is worth all and more than I told you. This you can see demonstrated.

I am at a loss to make any move until I see you. The T. P. matter is very important, and if I could see you we might do something.

EXHIBIT HAY, 54.

Received yours this morning, and telegraphed as requested. Your affairs, I think, are brightening, and the Supreme Court will set you right. It is hard to do, but bear your trials with patience. Your opponents are as much worried as you are.

I telegraphed not to see F., as I see no good from doing so. I wish we had the turnpike. Now, if you will turn from the dark side of your affairs and look for a moment on the other side, as it is likely to to be in the next twelve months. Can't we get the turnpike? I think we can get it on six, twelve, and eighteen months, with interest added, if not without; most probably not without the interest on your notes, letting F. retain the securities he now has, until the debt is paid; these securities are the turnpike stock, and Prindle's notes. Or, I think it may be done by an agreement to pay so much money at such times, without giving notes, merely executing a contract. In this way no notes could be thrown into market.

I think we can make the money in that time, can't we? It would be a point gained to get the turnpike, and if it can be arranged as suggested, without giving notes, would it not be wise to do it? In 18 months we can raise the amount, I should think. If you agree to this, enclose me a power of attorney to act for you, and give me references for F., as to your ability, &c. The sale takes place the 1st, so what is to be done must be done quickly.

The springs arrived; such of them as are elastic will answer very well, but many of them are very hard and not elastic, or very little so. Can you use in any way those that we cannot?

As to shoes, leggins, &c., I would make one application, embracing shoes and gaiters worn on the feet, and make a separate application for the leggins, corsets, &c., &c. It is a first-rate suggestion to apply the principle to corsets, and very good as to dresses.

You might give the exclusive right to corset a manufacturer, but I do not see how you could prevent all dress-makers from using it if they

24 had the rubber. It is true they would have to buy the rubber-cloth. All these things cannot be embraced, under the rules of the office, in one application, nor am I sure that the leggins, corsets, &c., can be in one application, though I think they can.

By the term "leggins," I meant when I wrote the cloth-gaiter which covers the instep and buttons around the leg under the pantaloons. You do not express any opinion as to the suggestions I made in reference to it, and how it could be made. I think very well of it, and should like to hear from you. Now, there are leggins of another kind worn over the pantaloons, in the southern country, and I suppose with you, by every body who rides any distance on horse-back. With these you must be familiar. They consist of about three-fourths of a yard of strong cloth, to be wrapped around each leg, and tied with strings, and most persons who use them are as particular about tying them on straight

as they are about their cravats. Now, the principle of the leggins embraces these, and they might be made as the other articles of dress and sold over the country; some of these should be gotten up tastily for city bucks who ride fine horses; they should be cut to fit the leg, and hook or button. I am afraid I weary you with suggestions, but it is with the hope of benefitting you.

When at leisure, send me the rubber-cloth you promised for the children. I want to project with a piece.

EXHIBIT HAY, 55.

NOV. 7.

Your different favors received. As to M. the specifications have been returned, and you have them, with the letter from the office. I cannot make the amendments without seeing them; now, suppose you enclose them to me, with M.'s name, or yours as attorney, signed near the bottom of a blank page and dated, so that I can write the amendment above it. This I can do, and then mail them here. I will do for them the best I can. It seems to me the patent for the process gives you the fabric made by that process, (the material you sent is a very good specimen,) or, if you are not in a hurry, send me the specifications and the letter, and let me write the amendments, and send them back for you to examine. Unless you are manufacturing, what is the need of hurry? The patent for the process protects , is favorable to G., as I have told you, but what is proper to be done I will have done. M. can tell whether what he asks interferes with G.'s patent of '44, or the re-issues in 1849; if it does not, there is no objection to disclaiming it. Write me fully about this.

If you send me the blank with signature to make the amendment, also accompany it with a letter to the Commissioner, saying you herewith enclose amendment as suggested, which you hope will prove satisfactory.

Now, as to your suit, I am sure it will be decided in your favor, and then, quere, can you and D. not get out a bill of injunction on your part, in virtue of Judge Giles' decision on the merits? This would settle matters at once, if it can be done. At all events, you can get a decision on the case decided by Judge G.; his decision will be confirmed. Your affairs are decidedly brightening; send me a copy of D.'s answer, when you have one to spare.

As to trees, &c., if I take the dwarf I can get them here; which I will do, and can also get the others; if there is anything new in grapes, not Isabella, or Catawba, or Black Hamburg, I should like to have three or four good roots, at any time before spring, if perfectly convenient. Don't trouble yourself about them.

Now, as to turnpike. The stock was sold and brought a few dollars less than $10,000; though cried out in other names, I am very confident it was bought by Fowle. I did not attend the sale, but had friends there to note all that occurred; there were few persons present. I think I shall try to set the sale aside, for he will give me all the trouble he can, and use his ownership to annoy; it would be wise to compromise this matter with him. We can make the turnpike very valuable, and it can best be compromised with F. now; if I fail to set aside the sale, which I shall try to do early next week, he will be more obstinate than now. Write me about this.

Now, as to bearings, &c.; all arrived safe. I think very well of it; it accomplishes in the simplest manner a very great desideratum, and will

prove very valuable, I think. Turn over and see a letter, which copy, and send to the office at once, as it is desirable to get it out as soon as practicable. So far as yet examined it is new, and will no doubt prove so on further examination. Your application is confined to to the use of vulcanized India rubber; it ought to have been to this or other suitable elastic material, so as to cut off all similar things. Let me hear about leggins, &c. Burn this, or return it.

In haste.

26 EXHIBIT HAY, 56.

NEW YORK, *Nov.*, 59.

Hon. W. D. BISHOP:

SIR: I beg leave to add as an amendment to the specification forwarded by me on the 30th of last month, for an improved mode of constructing the bearings for railroad and other machinery, the following:

Insert after the word invention, on page 2, line 9, the word "consists in surrounding the bearings of railroad journal-boxes with vulcanized India rubber, or other suitable elastic material." On page 3, line 10, insert after the words rubber, "or other elastic material," after the word interposing, 11th line, same page, insert "it." Also on line 13th, after the word rubber, insert "or other elastic material;" also insert in the claim, on 4th page, after the word rubber, which occurs twice, the words "or other suitable elastic material," and much oblige,

Yours, res.,

A. H.

EXHIBIT HAY, 57.

Yours of yesterday received. If M. had to wait his turn, it would take some two months. I will try and have it done this week; if not, certainly the next. I am glad you like the shoe matter. The gaiter matter suggested yesterday is fully if not more important; it uses up more elastic cloth, and can be made exceedingly comfortable. After thinking of it, let me hear from you, with what suggestions you have to make; and if you like it, I will put it in form. Both you and D. have taste enough to get up something nice. When you have nothing to do, tell me some of your objections to the hoops; as now made, they cost with us about $3.50, fair article.

Now, as to turnpike. I would like much if we could now own it. Can't you see your way clear enough to buy on time, say 4, 8, and 12 months? It can be done for $15,000—may be on little longer time.

But you know what you can do. The sale takes place Nov. 1st, so you see there is little or no time for action.

After you have read my notes, burn them; this I regularly do with all yours.

27 EXHIBIT HAY, 58.

I was in hopes of hearing from you this morning. Please say when you can come on, for it is important I should see you, if I have to come on.

Matters are as I wrote you, except the O. & A. R. R. Co. have withdrawn their travel from the R. R. and put it on the boat, which enables them to do with one line of omnibusses in place of two, one at each end

of the line, which the R. R. requires. But this is a serious matter to us, because they have withdrawn their omnibusses, and being unable to hire or get any here, the R. R. on this account is stopped to-day, and must be until we can get omnibusses. I am afraid this will make the councils more disposed to sell at once; I am also afraid I cannot get omnibusses and horses without buying them. It would be a good investment, but the bill of the B. & O. R. R. for extension across the river is expected to pass, which renders persons not connected with the enterprise unwilling to engage in it.

If we could confer fully we could see what is best to be done. Let me hear from you, and also about your own matters. I am at a loss to know whether, as matters now stand, you can or cannot purchase. If not, I must do everything to fight off a sale.

With best wishes, ever yours.

EXHIBIT HAY, 59.

WEDNESDAY.—I this morning received yours from Boston, and am very anxious to hear further, what is said or done, how you are affected personally. I suppose you make deadly enemies, yet what could you do with the set you were contending with? What lawyers are implicated with J——n and G——? I hope it will give peace and quiet. I wish you would enclose me a letter to Cameron, that will place me on good terms with him as your friend, and make him take an interest in my R. R. matter before the Senate. Do this at your earliest convenience, and also to any other Senator you may know well enough. I would like very much to see you. I have written before on R. R. matters, which you will receive.

My kindest wishes for success, and peace and quiet for you.

28 EXHIBIT, HAY, 60.

MY DEAR SIR: I wish you to do me a small favor. I have for some time wanted some springs for my cars, and have postponed getting them in order to try something new, but now I must have some at once. Send me enough rubber springs for two of my cars; they are the same as used on city railroads.

Such as I want are made of round blocks of India rubber, from 2½ to 3 inches diameter, and about 2 inches thick, so that 3 blocks compose a spring, and as mine are arranged it requires 8 springs to a car, or 24 of these blocks of rubber to each car. Please get them of good material, and send them by express if it does not cost too much; and send amount of bill, which the R. R. will pay; buy them without saying for whom or what road, and send them to me.

Yours, truly,

JAMES S. FRENCH.

These springs you can get of the New England Company ready made, or at some place which supplies the city cars.

EXHIBIT HAY, 61.

I wrote you this morning, and find on getting home to-night the "Times."

There is one consolation you have certainly; if you are worried others are certainly as much so, and I think your advertisement being sustained

by the courts, will override the other. Advertisements in newspapers have, however, comparatively few readers. Have printed a number of copies of your advertisement, and send them to dealers all over the country; this will help. Let me know when the hearing in the case before Nelson comes on.

I saw L. to-day after writing you. I think we will carry the matter through the councils. Keep us apprised of what occurs.

EXHIBIT HAY, 62.

APRIL 24.—A patent was granted Geo. A. Englehard, for an
29 improvement in varnishes, March 20th, 1860—No. of patent 27,540; and he says in his petition he has discovered an improved method of using the product described in the patent issued to Englehard and Havermann, Nov. 22, 1859; uses the solution as a varnish. It is a practical application as a varnish of the product described in the other patent; claims it as applicable to a great many purposes. It is a short specification; send and get a copy, if you want it. Has Judge D. ever decided M.'s case yet?

Now, not knowing how you are situated as to your affairs, I hate to urge you about other matters. The R. R. is destined to be very valuable. As to the sale, it stands as I wrote you, and whether they will sell or not I can't say.

As the road is stopped for want of omnibusses, this may make them sell; if we are prepared to buy we could use it as an argument. If we had the Washington City debt, of course the whole debt, what has been paid as well as what is due, all embraced, and the turnpike stock or Fowle's debt, we could very soon, if the B. & O. R. R. build the bridge, pay for it.

The matters you mention as to proportions, &c., &c., are things for us to agree about. So I am standing still in this whole matter to confer with you, and the road is also still.

I have never heard how your Boston answer ended; what was accomplished?

EXHIBIT HAY, NO. 63.

The Alexandria and Washington Railroad must form a link in the chain of railway between Washington City and New Orleans, because it occupies the only route that can be had between Alexandria and Washington. Between the terminus of the Orange and Alexandria R. R. and Washington there must be a land-connection, and the Orange road must own it, or make terms for the transportation of its passengers, mails, and freight. This route is owned by the Washington and Alexandria R. R. Co., and is in good working order, and daily paying more than all its working expenses.

The Orange company see the necessity of owning this road, but are unwilling to pay what it is worth, and are waiting with a hope that its embarrassments will compel a sale, and that then they can buy at their own price.

If the Alexandria and Wash. road can stave off its indebtedness say for two or three years, then before that time the Orange road must come to them and treat on fair terms. I say must, because during the
30 coming year the Orange road will be completed to Lynchburg, which will give a direct route through the South and West to New Orleans. During the past summer it carried some 660 passengers

daily, and is still doing very well. Its completion to Lynchburg will shorten the distance to New Orleans some 200 miles over all other lines, and must lead to a great increase of travel and insure always the public mails.

It will probably land at Alexandria 1,000 passengers a day, travelling north and south.

And the Alex. and Wash. R. R. offering the only land-connection between that place and Washington, they must, if the Alexandria and Wash. R. R. keeps along, come over it.

At present this road puts its passengers on a boat at Alexandria and thus transports them between the two cities. If there is a fog on the river, which was the case for three days last week, then the boat cannot run, and their passengers have to be hauled in omnibusses over the turnpike road between the two cities, which turnpike is owned by the Alex. and Wash. R. R. Co., or over the railroad.

If the river is frozen, they are in the same condition. These things make a land-connection to them a matter of necessity, and yet they are now suffering all these inconveniences, actuated by the miserable policy, that by waiting they can buy the Alexandria and Wash. R. R. cheap. And this is founded simply on the fact that they can see but one person who controls its affairs, and therefore they think he will tire out and break down.

If there is no railroad-bridge built over the Potomac, the Alex. and Wash. R. R. is still a necessity to the O. and A. R. R., because it will save them the land-carriage between Alex. and the bridge (about 6 miles) and from that point to the Baltimore depot they can use omnibusses, which is very little farther than from where their boat lands to the Washington depot.

For the railroad from Alexandria to the bridge they would now contract.

But this enterprise is destined to be an exceedingly valuable one. A bridge for common travel if not for railroad must be kept up at the site of the present bridge, and whether a railroad be permitted to cross at this point, or omnibusses have to be used from this point to the depot of the Washington branch of the B. and O. R. R., it is still the shortest and best land-connection which can be had between Alex. and Washington, and better than a connection by Georgetown, which would prolong the distance some six miles, and involve, besides, the tunneling of Georgetown, which no company can ever afford to do. Besides, the Orange R. R. connecting direct to New Orleans, the Manassas Gap Railroad running through the Valley of Virginia, and to extend to the
31 Ohio, (now in operation,) and the Loudon and Hampshire R. R., a great deal of work on which is already done, extends to Harper's Ferry, thence to the coal-fields. All terminate at Alexandria, and all must avail themselves of the transit over the Alexandria and Wash. ington, the only land-route which can be had between Alex. and Wash-
City. Now, is there another line of R. R. in the United States of so much prospective value as this short link between Alexandria and Washington? If kept independent, as it ought to be, no through ticket over these roads can be had without its consent. Kept independent, it cannot be dictated to, but is so situated, it can in all its arrangements secure for itself fair terms. With a R. R. bridge over the Potomac, it would carry an immense amount of light freights, express-goods, &c. And nothing is more certain than that a railroad must cross the Potomac where the bridge now stands. It may take time, but it must come, and will be built by Congress. Now, to take advantage of all these

things it is only necessary to be able to wait, to bide my time. The road is more than paying expenses, including repairs, and everything will co'tinue to do so.

But there are two things which trouble it, or may do so, so as to give trouble.

If these were guarded against, the road can be made very valuable, either by sale or lease or working it. The road has cost about $130,000. The city of Washington has the first lien on it, and for $60,000, payable in ten annual installments of $6,000 each, commencing January 1st, 1858. We were not able to pay this first enstalment and the city paid it for us, and has also paid one year's interest for us, and will have to pay the next instalment and interest. (The bridge was carried away, which greatley embarrassed us; it is now in good order.) Now, whether the city will continue to pay for us, as her security is ample, an outlay of $130,000 to secure $60,000, or whether she will req'ire the road to pay up, I do not know.

I think she will advance for us until we get across the Potomac, and will not let us be sacrificed. But you cannot calculate certainly on city councils. But no debt can be more secure than our bonds guaranteed by the city of Washington, whose stock is above par.

If the city of Washington should be indisposed to meet further advances she would still remain bound for the guaranteed bonds, if a third party would take them up and hold them. They would still be secured by the first lien on the R. R., and endorsed by the city of Washington. The sum which the city can demand payment for after next January will amount to $17,400. If the city should require this, and I could get some one to pay this, holding the city and road still bound for it, the first trouble would be relieved. The second trouble is, the road is in litigation about a matter involving $15,000.

32 This may be decided in a few months or it may be years, but this must be guarded against. To secure this debt, we have placed as collateral security 477 shares of Washington and Alexandria Turnpike stock, which cost $23,850 cash, and pays regularly about 8 per cent., and $4,000 in perfectly good paper. This is enough to pay the debt when it shall be decided. The dividends on the stock keep down the interest. But it would not do to sell the turnpike, it would build up a rival interest on railroad.

Both of these claims have ample security, if they can be postponed, or paid if it becomes necessary, and it may not be for some time. The road can work its way and realize all I have claimed for it; all that is requisite is to be able to wait to insure a large profit on this enterprise.

EXHIBIT HAY, 64.

Yours of 27 just received, (30th.)

If when the extended road leaves mine to connect with the O. & A. R. R. the connection be made within the limits of Alexandria, it would be made through the streets and would cost nothing for right of way: if outside of the city the connection is made, which the city has nothing to do with, then the right of way would have to be condemned nearly the whole way through fields worth from 50 to 100 dollars per acre. All this the Orange Road would see to. When this connection is made, the B. & O. R. R. Co. will make the lines north and south contribute to pay for it. This can be arranged by you if you manage well.

The commissioner, you see, has been appointed. All I want in this matter is that my position as a Union man, that is, for using all honor-

able means to preserve the Union, which I have done and am still doing, should be made known by you to "the powers that be." If then, knowing that they remove me, I have no care about it. There is great pressure, and I suppose many will be turned out. Still, being competent, and for the Union, if Virginia is to be represented, then I should be retained. Please attend to this in time, for great efforts are being made to get office.

To-day I have been thinking a good deal about breech-loading cannon. I have mentioned the matter several times to you.

The cannon I referred to is, I think, the best ever patented, the simplest, and cannot fail to answer. No publication of it ever has been made.

If H. D. and you owned it, independent of its being the best, you could make it settle D.'s claim against General James. This I can
33 explain when I meet, and I think D.'s advantages now, he can get it adopted. It differs from all others in this, that any common cannon can by this patent be readily made breech-loading. If you are coming on at once, I will show it to you. If not, I will send it to you by express, so that you can show it to D. You can by it settle D.'s matter with General J. Three artillery officers have to-day examined it, and one who has long been in active service says it is beyond question the best thing out. It can be adopted in the South without trouble.

Let me hear as soon as you can, and I hope you have compared opinions with Felton as to the connection. Keep well apprised of the Broadway R. R. so as to take a hand in it.

I had the model made showing how the rails are connected.

Burn this.

EXHIBIT HAY, 65.

I have observed the struggle in Congress on the part of the B. and O. R. R. to extend its road across the Potomac at the Long Bridge, so as to form a connection with the Orange and Alexandria R. R. The advantages of this connection are apparent.

The difficulty in the way is that the gap between Alexandria and the Long Bridge is occupied by an independent company, the Alexandria and Washington R. R. Co., who own the only practicable right of way between the two places.

The affairs of this company I am acquainted with, for I am a large creditor of it, and know that the road cannot be sold without the consent of the company. By litigation, if a sale be attempted, it can be kept off for years. With the consent of the company it can be made in a very short time. I control most of the claims against it, and can manage to control all, so as to effect either a partial sale or a sale of the whole road and franchises. Felton knows all about the connection.

The chief debt is the mortgage to the city of Washington, but this cannot be closed against the wishes of the company. This is $60,000 and interest, and I learn the mortgage cannot be closed for several years, if the company oppose it.

The debts of the company amount to about $150,000, and these I should have to arrange to affect a sale.

I have hastily written the above. The other sheet contains two propositions, either of which would answer.

Your plan will be to state that you are interested in this matter, and have facilities for settling the whole that nobody has. That you are

willing, as stated, to keep the local road and give them an independent track, or to sell out entirely; that to arrange to do either will take time, for you will have to buy up all the debts and get the company to agree to sell, but you can, you think, accomplish it 2 or 3 months. But to
34 induce you to do this they must enter into a positive agreement to buy on the terms you propose, or such other as they may suggest. I think I would increase the $110,000 to $120,000 for a final sale. Hold out to them that you can settle this matter when nobody else can.

If they make you propositions, show them to me. You have enough here to make a beginning at $120,000; the right of way alone and the location of the road makes it an exceedingly cheap bargain. A survey of the route will show this, so demand $120,000; La Trobe will not think it too much.

All this can be done for the sums named; how, I will explain.

EXHIBIT HAY, 66.

I think, and indeed feel certain, I can do this; can transfer to the B. & O. R. R. Co. the right to lay a separate track and operate it as an independent line from the Long Bridge along the line of the A. & W. R. R. to within about a half mile of the Orange and Alexandria depot, from which point on the line of the A. & W. R. R. they would diverge in order to make the connection with the Orange road. This will give to the B. & O. R. R. Co. an independent line from their depot to the depot of the Orange road, in all respects their own property.

This arrangement reserves to the Alexandria and Washington road their present track for local travel, and would require that the Baltimore and O. R. R. should by contract guarantee to the A. & W. R. R. the use of their bridge on fair terms for their local travel, but not to interfere with their through trains. This I can accomplish for $50,000.

Or I think I can purchase the whole road, franchises, &c., for $120,000, and if either proposition be accepted, I will see if I can make the arrangement, which I think I can do. The indebtedness of the company is much larger than this, and various arrangements would have to be made, which I would not undertake unless on a positive agreement.

I commenced these papers as if written by you, so I fear they will not be very clear, as I have been so often interrupted while writing. But the point is, Felton and Garrett want this connection. You can get it for them. You can sell them the whole road or the right to lay a track. Can arrange it at once, so that they can go to work and lay their road; if they do not like your propositions, let them make others.

EXHIBIT HAY, 67.

Indebtedness of the Alexandria and Washington Railroad Co., April 8, 1859:

| | | | |
|---|---|---|---|
| 35 | Bonds of company guaranteed by city of Washington | | $60,000 |
| | Interest on same | | 5,100 |
| On this sum the city of Washington advanced | | $17,400 | |
| Due to city | | 17,400 | |
| To bondholders | | 48,000 | |
| To T. J. Walker, "Washington" | | | 550 |
| | Ward, " | | 50 |
| | Purdy, " | | 90 |
| | Haines, Maryland | | 225 |

| | | |
|---|---|---|
| Waters & Zimmerman, "Alexandria" | | 550 |
| Col. Edsall, | " | 350 |
| Russell, | " | 100 |
| Bailey, | " | 105 |
| Studds, | " | 100 |
| Windsor, | " | 70 |
| Baker, | " | 200 |
| Pat. Conner, | " | 90 |
| Thos. Jameson, | " | 150 |
| Boynton, | " | 100 |
| Engineering expenses | | 650 |
| Davis & Caton, "New York" | | 300 |
| Shinn & Co., Alexandria, "freight" | | 250 |
| Alexandria & Orange R. R. Co., freight, &c | | 800 |
| Tippitt, for lot | | 950 |
| Anderson, for engines | | 16,500 |
| Fowle, Snowden & Co | | 15,000 |
| Morris Tanner & Co | | 4,500 |
| John Bond | | 2,500 |
| Henry Studds | | 250 |
| Prindle, for note loaned | | 1,100 |
| Wason & Co., "Springfield, Mass" | | 8,000 |
| Windsor, "contractor" | | 1,600 |
| Henry Studs | | 750 |
| Lawyer's fees | | 500 |
| | | $121,780 00 |
| For the lot $950. The lot is worth this sum | | 950 00 |
| Windsor, $1,600, secured by bonds guaranteed in hands of McGuire | | 1,600 00 |
| Anderson debt, secured by deed on land, say | | 12,000 00 |
| Fowle & Snowden debt, secured by $23,800 turnpike stock, worth at least | | 15,000 00 |
| Henry Studds owes road | | 750 00 |

By paying Fowle's debt we could get the turnpike stock, a good paying stock. This debt would be settled, I think, for $12,000, cash. Anderson debt, by the land, and say cash, $5,000. Besides the above
36 indebtedness, there is the following items: I sold to Thornton, for $10,000 cash, $30,000 in coupon-bonds of the co., bearing interest 7 per cent., payable 20 years after date, interest payable semi-annually. He got possession of the bonds, paid between 5,000 and 6,000; and his notes for the remainder, I paid over to Bond in settlement of his debt, and hold a part now. The sale was a cash one, but to oblige him I took his notes for the sum, payable every few days. He paid the amount I mentioned and no more. This is a fraud, and can be settled by paying over the amount we got. This would increase the indebtedness of the company $6,000, making it $127,780, while Bond's debt ought to be deducted from the amount. Lenox has put in money between 5 and $6,000.

37 *Defendant's Exhibit "J. H. B. L. 1."—W. S. C., audr.*

(Copy.)

1208 VINE STREET,
*Philadelphia, March* 28, '61.

SIR: I have observed the struggle in Congress on the part of the Baltimore & Ohio Railroad Company to extend the road across the Potomac at the Long Bridge, so as to form a connection with the Orange and Alexandria Railroad. The advantages of this connection are apparent. The difficulty in the way is that the gap between Alexandria and the Long Bridge is occupied by an independent company, the Alexandria & Washington Railroad Company, who own the only practicable right of way between the two places. The affairs of this company I am acquainted with, for I am a large creditor of it, and know that the road cannot be sold without the consent of the company; by a litigation, if a sale be attempted, it can be kept off for years. With the consent of the company, it can be made in a very short time. I own or control most of the claims against it, and can manage to control all, so as to effect either a partial sale or a sale of the whole road and franchise. The chief debt is the mortgage to the city of Washington, but this cannot be closed against the wishes of the company; this is $60,000.00 and interest, and I learn the mortgage cannot be closed for several
38 years if the company oppose it. The debts of the company amount to about $150,000.00, and these I should have to arrange to effect a sale. Knowing that you are counsel for the B. & O. R. R. Co., and from our former acquaintance, I take the liberty of enclosing this proposition to you, with a request that you lay it before the directors of your company, assuring you that I can control the whole of the road and feel a desire to get out of it.

I am, sir, very respectfully, &c.,

ALEXANDER HAY.

To J. H. B. LATROBE, Esqr.,
*Counsellor at Law, Baltimore City, Maryland.*

39 *Defendant's Exhibit J. H. B. L. 2.—W. S. C., audr.*

(Copy.)

ALEXANDER HAY, Esqr.,
1208 *Vine Street, Philad'a:*

DEAR SIR: I have your note of in regard to the extension of the Washington br. of the B. & O. R. R. Co., and have placed it before Mr. Garrett, the president.

Although solicitor of the company, I have little to do outside of my strictly legal duties; but should it fall in my way to promote your views in any manner, you may rely upon my doing so.

Most truly yours,

JNO. H. B. LATROBE.

APRIL 2D, 1861.

(Indorsed:) Sup. Court U. S., 1874, Octo. term. No. 191. James S. French, appt., vs. Alexander Hay. Certiorari & return. Filed 13th January, 1875.

REC. 191—3

40 Supreme Court of the U. S.

JAS. S. FRENCH
*vs.*
ALEXANDER HAY. } No. 191.

It is agreed that any exhibits on file in this case in the supreme court of the District of Columbia may be sent up in answer to the writ of certiorari sent down recently to be pointed out by either party.

Jany. 12th, 1875.

FRED. P. STANTON,
*For French.*
A. G. RIDDLE,
*For Hay.*

(Indorsed:) 1337. Eq. doc. 9. French vs. Hay. Agreement of counsel as to exhibits to go before S. C. U. S. under certiorari.

41 (Copy.)

*Pltffs. exhibit—Origl. power of atty. filed with testy. of French—W. S. C., audr.*

To all whom it may concern:

Be it known that I, Alexander Hay, of the city of Philadelphia, do hereby constitute and appoint James S. French, esq., of Alexandria, Virginia, my true and lawful attorney, for me and in my name to make such disposition as he may deem proper of all the judgments, notes, or claims which I hold against the Alexandria and Washington Railroad Company, or against said company endorsed by James S. French and Walter Lenox, or by either of them; to take all necessary steps for collecting the same, or to pledge or hypothecate the same, or compromise, or sell the same, on such terms as he shall deem proper, and do with them whatever he shall choose, as fully as if they were his individual property; and I do hereby, by these presents, ratify and confirm the same as fully as if I were present acting in person.

Given under my hand and seal this 24th day of August, A. D. 1860.

ALEXANDER HAY. [SEAL.]

Witnessed by—
ANDREW J. BOSWELL.
THOMAS HAY.

42 (Copy.)

*Plaintiff's Exhibit W, from pages* 131 *&* 132 *of the printed record, in the case of Alex. & Wash. R. R. Co. v. The Wash., Alex. & G'town R. R. Co.—W. S. C., audr.*

Know all men by these presents that I, Alexander Hay, of the city o Philadelphia, State of Pennsylvania, have constituted and appointed Joseph B. Stewart, esq., of Washington City, D. of C., as my true and lawful attorney, at law and in fact, to act for me and in my behalf in reference to the Alexandria and Washington Railroad Company, and in my interest therein, as the representative of the various judgment creditors, as by a reference to the record of the courts of Alexandria County, Virginia, will more fully appear [illegible] name, place, and

stead to do and perform all manner of things as I could do were I personally present and acting for myself, and especially in reference to any and all negotiations with the corporation of the city of Washington, in reference to the purchase of the interest of the same, or the negotiations with the Government of the United States, or any other party or parties, in reference to rebuilding or working said road, as I could do were I present signing and sealing or acting for myself; hereby affirming, all and singular, his acts, that he, my said attorney, may do or perform in or about the premises mentioned.

43 This instrument is not intended to authorize my said attorney to contract debts or make any contracts for which I am to be liable, but only to authorize him to use, as he may think advisable, the present indebtedness of the Alexandria & Washington Railroad Company.

Witness my hand & seal this 23d day of January, A. D. 1862.

ALEXANDER HAY. [SEAL.]

Witness:

DAVID G. BARNITZ.

*Exhibit No. 2.—Amended bill referred to.—W. S. C., audr.*

Exhibit No. 2 in amended bill. Copy of a document handed to Joseph Davison, esqur., by Joseph B. Stewart, esqur., Washington, D. C.

As attorney in fact of Alexander Hay, and all the judgment-creditors against the Alexandria & Washington Railroad, and in reference to the deed of trust to secure a certain $30,000 of bonds issued by said road under a special act of the Virginia legislature, and now held by Benjamin Thornton, in England, or his assigns, I hereby agree and stipulate, on behalf of myself and constituents, that if a sale be made under said deed of trust, and the said railroad be purchased in by myself or constituents, that the said Thornton shall have the right to con-

44 tinue his interest in the same according to the ratio of his present lien upon and demand against the same, and shall enjoy and receive a pro rata rate of all the appreciations of value or profits derived from the future use or development of the same, and be created a stockholder accordingly. And I further bind myself and constituents, at the proper time, to make and give such other and further assurances or covenants as may be deemed necessary to perfect this agreement.

Witness my hand and seal this 29th day of January, 1862.

JOSEPH B. STEWART, [SEAL.]
*Attorney in fact for Alexander Hay and others.*

Witness:

JOSEPH DAVISON.

(Copy.)

*Exhibit No. 3 in amended bill referred to.—W. S. C., audr.*

Exhibit No. 3 in amended bill. Copy.

This memorandum of agreement made this 28th day of January, 1862, witnesseth: That I, Joseph Davison, agent for certain bonds and bondholders against the Alexandria and Washington Railroad, issued by authority of a special act of the Virginia legislature, and secured by a

deed of trust executed by the president and directors of said railroad to Walter Lenox as trustee, dated the 10th day of July, 1857, as
45 will more fully appear by reference to the same, have employed Joseph B. Stewart, attorney at law, to protect the interests of said bondholders, at a contingent fee of one-half of the whole amount received on said bonds in the sale of the same, or of the said road, over and above the sum of ten thousand dollars, and all the interest that the said bondholders or any of them may have paid, or may have to pay on the said thirty thousand dollars of bonds, at the rate of seven per centum per annum. Said bonds are now ordered from England, where they are held and owned. The said Stewart to use all due diligence in the closing out and perfecting the interest of said bondholders in and to said road. And I bind myself, as attorney and agent aforesaid, to execute such other and further agreement and assurance as may be necessary to make good and effective the above agreement, according to its intent and meaning, hereby creating the said Stewart, through me, the true and lawful attorney & solicitor of said bonds and bondholders in the premises mentioned. Witness my hand and seal the day and year first above written.

JOSEPH DAVISON. [SEAL.]

JOSEPH THORNTON, *witness.*

Endorsements.

There will go to Mr. Stewart $35,000 of stock out of the $142,000 set over to me; his $35,000 being subject to a pro rata deduction in
46 making up the $50,000, or whatever may be used of that amount which is set apart.

Washington City, D. C. May 3rd, 1862.

JOSEPH TRORNTON.

This memorandum is hereby cancelled, the said Thornton having surrendered and assigned to me the full quantity of stock therein stipulated to be paid.

Sept. 11, 1862.

JOSEPH B. STEWART.

CLERK'S OFFICE OF THE SUPREME
COURT OF THE DISTRICT OF COLUMBIA,
*January* 13, 1875.

I, Return J. Meigs, clerk of said supreme court of the District of Columbia, hereby certify that the foregoing writings are true copies of papers all marked "W. S. C., audr.," pointed out by F. P. Stanton, esqr., as documents embraced in the agreement of counsel hereto annexed, dated January 12, 1875. Witness my hand and the seal of said supreme court of the District of Columbia.

R. J. MEIGS, *Clerk.*

(Indorsed:) Sup. Court U. S., 1874, Oct. term. No. 191. James S French, appellant, vs. Alexander Hay. Agreement of counsel & addition to record. Filed 15 January, 1875.

# Supreme Court of the United States.

October Term, 1874.

JAMES S. FRENCH, Appellant,
*v.*
ALEXANDER HAY.
*No.* 191.

## Brief of the Appellant.

This is an appeal from a decree in chancery rendered by the supreme court of the District of Columbia.

### ABSTRACT OF THE PLEADINGS.

The bill charges that in 1859, French being the president of the Alexandria and Washington Railroad Company, and owner of three-fourths of the entire property thereof, was anxious to concentrate the debts of the company in the hands of one friendly creditor with sufficient means to hold the same. He entered into negotiations with the defendant, Hay, then a personal friend of the complainant, and they made an agreement by which Hay promised to advance the necessary means to buy up all the said debts, the same to be assigned to him and held in his name as security for the advances made. The money advanced by Hay was to be reimbursed, and French agreed to assign to

him, in addition, such a portion of his stock in the company as would satisfactorily remunerate him for his advances.

That in pursuance of said agreement Hay did advance about $5,000, directing French to use it in purchasing the debts of the company, and promising to make further advances as required. That partly with this money and partly with his own means, French purchased debts amounting, without interest, to about $31,000. So far as these debts had already been reduced to judgments, they were regularly assigned to Hay, and such as were not in the form of judgments were assigned to Hay, and judgments taken against the company in his name. A list of these judgments is given in "Exhibit A."

After this, Hay declined making any further advances, and by the consent of French vacated the agreement, and reassigned to him all the said claims against the railroad company, on the said French's agreeing to repay the said sum of $5,000 with interest. This agreement of rescission was embodied in the two instruments marked Exhibits B and C.

The bill further charges that afterwards, during the civil war, while French was absent and could not get back to attend to his affairs, the said Hay proceeded to collect, and did collect and appropriate to his own use, all the judgments set forth in Exhibit A, which were the property of French, although they stood in the name of Hay.

French claims that Hay holds the money so collected in trust for him, subject to the repayment of the $5,000 with interest, and prays for an account and a decree for the money due.

Complainant's Exhibit A is found in the transcript, pages 3, 4, and 5. B and C are as follows:

EXHIBIT B.

For and in consideration of the sum of five thousand

dollars, with interest from this date, I hereby assign and transfer to James S. French, of Alexandria, Virrginia, all the judgments, notes, or claims which I hold against said railroad company endorsed by James S. French and Walter Lenox, or by either of them; to be held by the said French, his heirs or assigns, as his individual property, upon his payment to me of the above-named sum of five thousand dollars, with interest from this date.

Given under my hand and seal this 24th day of August, 1860.

[SEAL.] ALEXANDER HAY.

Witness: THOMAS HAY.

EXHIBIT C.

*To all whom it may concern:*

Be it known that I, Alexander Hay, of the city of Philadelphia, do hereby constitute and appoint James S. French, Esq., Alexandria, Virginia, my true and lawful attorney, for me, and in my name, to make such disposition as he may deem proper of all the judgments, notes, or claims which I hold against the Alexandria and Washington Railroad Company, or against said company endorsed by James S. French and Walter Lenox, or by either of them; to take all necessary steps for collecting the same, or to pledge or hypothecate the same, or compromise or sell the same, upon such [terms] as he shall deem proper, or do with them whatever he shall choose as fully as if they were his individual property. And I do hereby, by these presents, ratify and confirm the same as fully as if I were present acting in person.

Given under my hand and seal this 24th day of August, A. D. 1860.

[SEAL.] ALEXANDER HAY.

Witnesses: ANDREW J. BOSWELL,
THOMAS HAY.

The answer of Hay denies, in general terms, all the allegations of the bill, except as they may be specially admitted; claims that Hay advanced large sums to French beyond the $5,000, without stating the amounts, except in

one instance, when it says $3,000 were advanced for the purchase of omnibuses; admits the correctness of the statement in complainant's "Exhibit A," but denies that French expended any of his own means in purchasing the judgments therein mentioned, and charges that French did not assign to Hay all the judgments purchased with his money, and specifies particularly a large debt of about $20,000, due to one Joseph R. Anderson, purchased by French, but not assigned to Hay.

The answer cautiously admits the execution of the power of attorney and the assignment, being the complainant's "Exhibits B and C," but insists that the assignment was conditional, and did not convey the judgments to French, inasmuch as he did not pay the $5,000 with interest.

The answer also explicitly denies that Hay ever collected any part of the said judgments; but, after giving a statement of the debts of the said railroad company, and of the sale of its property and franchises under one of the deeds of trust, and the purchase of the same by Hay, the answer uses this language: "That after said purchase at public sale, and the title to said road vested in this defendant, and thereby merging into said road the said judgments against it, defendant directed his counsel to mark the same satisfied on the record; which he presumes was done."

The answer is very abusive of French, and contains much irrelevant matter. A number of French's letters, having no connection with the case whatever, are made exhibits, apparently with a view to show that he favored the rebellion. Hay also states, in his answer, that French, when he went South, took the rolling-stock of the railroad with him, and sold it to the rebel government, and he claims that French ought to account to him for this property.

To this answer a replication was regularly filed.

Depositions were taken on the part of the complainant, but none on the part of the defendant; and on the 21st day of October, 1869, the following interlocutory order was made:

It is therefore ordered, adjudged, and decreed that it be referred to the auditor of this court, to take an account of the moneys advanced by the defendant to the complainant at any time as stated in the answer, and also of any sums realized by the said defendant from the judgments assigned to him by the complainant; and that all other matters are reserved until the coming in of the auditor's report. The auditor is required to hear the testimony offered by either party on reasonable notice. (Transcript, p. 53.)

A few days after this interlocutory decree Hay filed a cross-bill in substance the same as his answer to the original bill, and praying that French may be required to account to Hay for the rolling-stock of the road, alleged to have been taken away by him.

Transcript, pp. 54 to 59.

French's answer to the cross-bill denies all its allegations, except as to the rolling-stock, which he repaired at great expense and sold for $11,000 to certain individuals, and not to the Confederate government. But he denies that he is in any way accountable to Hay for this transaction. He also charges Hay with taking the old iron removed from the track of the road, and selling it for some $10,000. (Pp. 59 to 63 and 65 to 69.)

To this answer there was a replication.

On the 17th February, 1870, a motion to vacate the interlocutory order above cited was heard and overruled. (P. 64.)

On the 27th June, 1870, the auditor filed his report and

the evidence taken by him. This report is found in the transcript, (pp. 69 to 72,) and the testimony follows. The auditor explicitly states that Hay advanced no more than $5,000, and that the judgments assigned to him, with interest, amount to no less than $45,184. It is shown that although these judgments were not realized "by collection or payment," they were indirectly realized "by procuring stock in the new company, founded on them, and by converting this stock into money."

To this report no exceptions were taken.

THE PROOFS.

The results of the testimony are very fairly and impartially stated in the auditor's report; but it may be necessary to refer more particularly to the statements of witnesses and the several documents which establish the facts on which the equity of the case is founded.

There is no attempt by Hay to prove any advance beyond the $5,000, admitted by French, and alleged to be all that he received. At page 40 of the transcript French exhibits and proves Hay's letter of August 22, 1859, in which the said sum of money was enclosed.

The two letters made exhibits in Hay's answer, and marked "A. H., Nos. 2 and 3," were written previously to the above, and were intended to induce Hay to make the agreement which he subsequently did make. One of them is dated in July, and both were written before the advance of the $5,000 on the 22d of August.

On receiving the money, French at once proceeded to buy debts against the railroad company to the amount of $16,526.52, for which he paid $4,486.68; and on the 9th of September, 1859, he sent an account of them to Hay, which said account is made an exhibit in the answer, marked "H, No. 1."

See Transcript, pp. 15 to 19.

French testifies (pp. 37, 38) to the facts referred to in these exhibits, and explains them with perfect clearness. Nearly the whole of the $5,000 advanced by Hay had been expended in purchasing the debts specified in Exhibit H, No. 1. These did not include the Anderson debt of about $20,000, and some others, which French purchased with his own means, and transferred to Hay in the expectation that Hay would carry out the understanding by which he was to relieve the railroad company of all its debts and hold them for the benefit of himself and French. The proof on this subject is found at page 28, and in the deposition of Francis L. Smith, (p. 40,) by which it appears that French and his wife conveyed lands to Anderson in payment of the said debt. This fact would seem to be fully acknowledged by Hay himself by the assignment contained in "Exhibit No. 3" to French's deposition, (pp. 44, 45,) and also by another assignment found in the Transcript, (p. 47,) all of which are fully proved in the deposition, (p. 28,) and nowhere attempted to be disproved or denied.

To the statement of debts purchased, which French forwarded September 9, 1859, Hay made no objection whatever, but at the request of French released him from his liability as endorser by written instruments, which French, in his answer to the eighth interrogatory, produces as "Exhibits 4 and 5."

Transcript, p. 45 to 47.

In French's letter to Hay, September 9, 1859, containing a statement of the debts he had purchased for Hay, he calls Hay's attention to the fact that he had also assigned him the Anderson debt, amounting to about $20,000, which French had previously purchased and assigned to Hay, and which Hay had reassigned to French, as shown heretofore in French's exhibit No. 3. With the release which French requested Hay to send him, Hay also sent

him another assignment of this same debt, witnessed before a notary public, which is made an exhibit by French in his answer to the eighth interrogatory in his deposition, marked Exhibit No. 6, already referred to at page 47.

After the purchase of the debts for Hay, set forth in the letter of September 9, 1859, French had still belonging to Hay between $400 and $500 of the $5,000 advanced. French expected Hay to settle, as he had promised to do, the Washington city debt and the debt due Fowle, Snowden & Co., and urged him repeatedly to do so; but Hay failed to settle either debt in part or in whole. In October, 1859, the debt of Fowle, Snowden & Co. was imperatively demanded. This debt amounted to about $15,000, and on this debt French paid, between the fall of 1859 and June, 1860, $1,900, $265.14, and $6,183, making the sum of $8,348.14, which was duly credited on said debt. French also paid to Prindle & Frobel, creditors of the Alexandria and Washington Railroad Company, secured by a deed of trust, over $6,000, and took from them an assignment of their debts. He also paid John Bond, another creditor of the road, $425.

See French's answers to the eighteenth and nineteenth interrogatories of his deposition, Transcript, p. 30.

Besides the large debt of Anderson's, which French had purchased with his own means, he also paid out for claims against the Alexandria and Washington railroad about three times as much money as Hay had advanced. Hay only advanced $5,000, while French, besides paying the Anderson debt, paid also, on account of other debts against the company, about $15,000.

While French was making these exertions, he was continually urging Hay to comply with the contract he had made, and proposed to Hay either to sell to him his entire interest in the road, or to buy out his (Hay's) interest.

Hay declined to purchase, or advance any further sums of money, and sold out his entire interest to French, as witnessed by the two papers, complainant's Exhibits B and C—selling the same for the amount he had advanced, viz., $5,000.

These papers gave French the absolute control of all the claims he had purchased for, and assigned to, Hay, with full power to do with them what he pleased. The sum he agreed to pay for them was made to carry interest, and no time was specified for its payment, that French might take his own time in doing the best he could. The kindest relations continued to exist between Hay and French, as is shown by the numerous letters passing between them, many of which are made exhibits in this case, up to the breaking out of the civil troubles. The letters of French made exhibits by Hay are sixty-five in number, and throughout the whole correspondence there is no demand made for the payment of the $5,000, nor any allusion even to the debt.

Such were the relations between these parties when the city of Alexandria was occupied by Federal troops in May, 1861. French had previously left for North Carolina, whither his wife and children had gone on a visit to some relatives.

See Transcript, pp. 28, 29, and p. 36.

All travel from Alexandria to Washington city over the Long Bridge having been suspended, French, having no use for, and no place to shelter, his cars and engines, caused them to be moved a few miles out of the city and placed on a switch of the Orange and Alexandria railroad, where he left them when he left Alexandria, thinking they would be safer there than in the city.

Transcript, p. 32.

Unfortunately for French, he had never recorded the assignments from Hay to him, and consequently Hay was the apparent owner on the record of the large debt of Anderson's, as well as of all the other debts set forth in French's statement of September 9, 1859.

After French left Alexandria in May, 1861, the United States Government took possession of the Alexandria and Washington railroad, removed the light iron rails from it, and relaid the road with new rails from the depot of the Orange road in Alexandria to the Baltimore depot in Washington city, and put the whole in complete running order.

While the Government was relaying this road in 1861, Hay, finding that French had not recorded the assignments he had given him, laid claim to all the judgments standing in his name, including the large debt of Anderson's, and employed Joseph B. Stewart as his attorney to aid him in collecting them. The old rails removed from the road by the United States Government, in order to relay it, were seized by Joseph B. Stewart as the attorney of Hay, and sold for about $12,000, in 1861, as is proved by the deposition of Oscar A. Stevens, taken in the railroad case, and made an exhibit by French in his deposition.

Transcript, p. 50; also, p. 115.

While French was thus absent from Alexandria, and unable to return, Joseph B. Stewart, as agent and attorney of Hay, entered into the contract evidenced by the two instruments of the 28th and 29th of January, 1862, which are as follows:

WASHINGTON, D. C.

As attorney in fact of Alexander Hay and all the judgment creditors against the Alexandria and Washington railroad, and in reference to the deed of trust to secure a certain $30,000 of bonds issued by said road under a spe-

cial act of the Virginia legislature, and now held by Benjamin Thornton, in England, or his assigns, I hereby agree and stipulate on behalf of myself and constituents that if a sale be made under said deed of trust, and the said road be purchased in by myself or constituents, that the said Thornton shall have the right to continue his interest in the same, according to the ratio of his present lien upon and demand against the same, and shall enjoy and receive a *pro rata* rate of all the appreciations of value or profits derived from the future use or development of the same, and be created a stockholder accordingly; and I further bind myself and constituents, at the proper time, to make and give such other and further assurances or covenants as may be deemed necessary to perfect this agreement.

Witness my hand and seal this 29th day of January, 1862.

[SEAL.] JOSEPH B. STEWART.
*Attorney in fact for Alexander Hay and others.*

Witness: JOSEPH DAVISON.

This memorandum of agreement, made this 28th day of January, 1862, witnesseth: That I, Joseph Davison, as agent for certain bonds and bondholders against the Alexandria and Washington railroad, issued by authority of a special act of the Virginia legislature, and secured by a deed of trust executed by the president and directors of said railroad to Walter Lenox, as trustee, dated the 10th day of July, 1857, as will more fully appear by reference to the same, have employed Joseph B. Stewart, attorney-at-law, to protect the interest of said bondholders, at a contingent fee of one-half of the whole amount received on said bonds, in the sale of the same or of the said road, over and above the sum of ten thousand dollars, and all the interest that the said bondholders, or any of them, may have paid or may have to pay on the said thirty thousand dollars of bonds, at the rate of seven per centum per annum; said bonds are now ordered from England, where they are held and owned; the said Stewart to use all due diligence in the closing out and perfecting the interest of said bondholders in and to said road. And I bind myself, as attorney and agent aforesaid, to execute such other and further

agreement and assurance as may be necessary to make good and effective the above agreement, according to its intent and meaning, hereby creating the said Stewart, through me, the true and lawful attorney and solicitor of said bonds and bondholders in the premises mentioned.

Witness my hand and seal the day and year first above written.

[SEAL.] JOSEPH DAVISON.

JOSEPH THORNTON, *Witness.*

Endorsements: There will go to Mr. Stewart $35,000 of stock out of the $142,000 set over to me; his $35,000 being subject to a *pro rata* deduction in making up the $50,000, or whatever may be used of that amount which is set apart.

JOSEPH THORNTON.

WASHINGTON CITY, D. C., *May* 3, 1862.

This memorandum is hereby cancelled, the said Thornton having surrendered and assigned to me the full quantity of stock therein stipulated to be paid.

JOSEPH B. STEWART.

Supplemental Transcript, p. —.

These instruments were evidently drawn in anticipation of the sale made on the 10th April following by Joseph B. Stewart, who had caused himself to be substituted as trustee in place of Walter Lenox, who was the original trustee named in the deed. At this sale Hay purchased the road for $12,500, although the track had just been relaid with new iron by the United States at a cost of more than $87,000; and thereupon the agreement for the distribution of stock was carried out, and Hay, as owner of the judgments assigned to him by French, received 1,570 shares at the par value of $157,000.

Transcript, p. 114; also pp. 126, 127.

No part of the sum of $12,500 bid for the road by Hay

was ever actually paid, but it is apparent that the sale was a sham, and the division of stock in the new company was based on the debts which the several parties claimed to hold against the old company.

Transcript, pp. 114, 115.

Hay sold the stock which he received for these judgments for $56,000, (p. 127.) It is elsewhere stated to have been $70,000 or $80,000, (p. 33.) Hay acknowledges that in these circumstances he ordered the judgments to be entered satisfied; and his attorney, Stewart, swears that they were actually paid. (Transcript, pp. 12 and 52.) This is not contradicted by Stewart in his attempted explanation at p. 128.

At the hearing, on all the pleadings and proofs, the court rescinded the interlocutory decree and ordered the bill to be dismissed. On appeal to the supreme court of the District of Columbia in General Term the decree of the court in Special Term was affirmed, and from this decree the present appeal was allowed.

ASSIGNMENT OF ERRORS.

1st. The court erred in rescinding the interlocutory decree which ordered the account taken by the auditor. No exception was taken to the auditor's report.

2d. The court erred in finding the equities in favor of the defendant and dismissing the bill.

3d. There was error in refusing to allow the plaintiff for the large judgment in favor of Anderson, and other judgments which the plaintiff had bought and paid for with his own money, but which had been assigned to the defendant in the general arrangement set forth in the original bill.

POINTS OF ARGUMENT.

1st. It appears from the pleadings and proof that Hay had agreed to furnish the means to purchase and hold *all the* debts of the Alexandria and Washington Railroad Company. He furnished only $5,000, with which about $16,000 of debts were bought. French with his own means purchased other debts to large amount, and had them all reduced to judgment in the name of Hay. But Hay soon found it inconvenient to fulfil his agreement, and the parties mutually agreed to rescind it. In pursuance of this arrangement, French was to repay the money advanced by Hay, and the latter relinquished all the judgments to French. The exhibits B and C (Transcript, p. 5) were executed to carry out this arrangement.

The sum of $5,000, with interest agreed to be paid by French to Hay, was not the whole consideration for the reassignment. The rescinding of the original agreement and the money paid by French out of his own means for some of the judgments were important parts of the consideration.

2d. The papers, B and C, were executed only to give French control of the judgments in pursuance of the more extended verbal agreement, which comprehended the whole transaction. Judgments may be assigned by parol.

Briggs *v.* Dorr, 19 Johns., 95.
Todd *v.* Stuart, " 342.

3d. The power of attorney, Exhibit C, was of itself a sufficient assignment of the judgments under the circumstances.

Gerrish *v.* Sweetser, 4 Pick., 374.
Raymond *v.* Squires, 11 John., 47.
The People *v.* Tioga, 19 Wend., 73.

An authority to collect a judgment or other *chose in action*, merely as collateral security for a debt, is a power coupled with an interest which cannot be revoked or annulled.

Wheeler *v.* Wheeler, 9 Cow., 34.
Canfield *v.* Monger, 12 John., 346.
Bromley *v.* Holland, 7 Vesey, 28.

4th. French agreed to repay the $5,000, with interest, but no time was specified. This implied a credit, and by all the authorities it was an agreement to pay on demand.

2 Parsons on Contracts, 552.
Warren *v.* Wheeler, 8 Met., 520.
Ryan *v.* Hull, 13 Met., 520.
Barry *v.* Ransom, 2 Kern, 462.

5th. Hay made no demand and gave no notice. He assumed the right to annul the contract and take control of the judgments on the ground that the assignment was conditional, and that the condition had not been performed. But, in truth, if there was any condition, it was to pay on demand; and this condition has never yet been broken.

Fairbank *v.* Phelps, 22 Pick., 535.

We, however, deny that the assignment was conditional in the sense stated. The stipulation about the $5,000 amounted to nothing more than a lien for that amount, to be enforced by appropriate means.

See 2 Parsons' Contracts, p. 529, note (*r*,) and the comments there, on the cases of Boone *v.* Eyre, 1 H. Bl., 273, and Campbell *v.* Jones, 6 T. R., 570.

6th. But it seems that, by virtue of his advance of $5,000 to French, Hay claimed to be substituted to all French's rights in the railroad. Wholly disregarding his

subsequent re-assignment of the judgments to French, in the absence of the latter he assumed control of the property; and the first thing he did was, in 1861, to seize all the old iron which had been removed from the track, and sell it for some $8,000 or $10,000. (Transcript, pp. 32, 50, 115.) The proceeds of this sale more than reimbursed him for the $5,000 to which he was entitled.

7th. It is not disputed that French bought the Anderson debt of over $20,000 with his own means. This is proved beyond all doubt. It is wholly inequitable for Hay to appropriate this debt because it was standing on the record in his name.

8th. Hay realized the full amount of the judgments. He admits, in his answer, that he directed his counsel to mark them all satisfied on the record. The auditor's report shows these facts generally, while they are circumstantially proved in the testimony. Stewart sold the railroad, and Hay bought it under an agreement with Thornton and Davison that these judgments should be extinguished by an issue of stock in the new company. Hay sold the stock which he got under this arrangement for $56,000, after having given Stewart a large amount of the stock for his agency in the disreputable transaction; and this large sum was realized by him without any advance whatever beyond the $5,000, all of which had been repaid, and more than fully paid, by the sale of iron as above stated.

9th. It is objected that Hay bought a bad title. That, however, was his own wrong, for the sale has been declared void by the courts of Virginia on account of the fraudulent combination by which it was made. Nevertheless, Hay and his assignees have managed to hold the railroad

for a number of years, and they are still in possession of it. If Hay were now to attempt to set up these judgments against the old company he would utterly fail; and as the judgments were standing in Hay's name French would not be more successful.

10th. It is said French, as president of the company, had no right to buy the judgments. If that question might be made between him and the company, it cannot as between him and Hay. The latter, having realized the full amount of the judgments, is responsible for the whole sum, after deducting $5,000, with interest from the 24th of August, 1860.

FRED. P. STANTON,
*For Appellant.*

# Supreme Court of the United States.

OCTOBER TERM, 1874.

*No. 191.*

JAMES S. FRENCH

*vs.*

ALEXANDER HAY.

IN EQUITY—ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

A. G. RIDDLE, *for Defendant.*

Judd & Detweiler, Printers.

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*No. 191.*

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*vs.*

ALEXANDER HAY.

IN EQUITY—ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

*The Bill* claims—

That in 1859, at the instance of French, Hay advanced to him $5,000, with which he purchased up certain judgments and debts against the Alexandria and Washington Railroad Company, amounting to $31,000, a list of which are appended. Ex. A, p. 3.

That in August, 1860, Hay sold and assigned these debts to French, (Exhibit C, p. 5,) and executed a power of attorney to French to control them in the name of Hay, (p. 5.)

French was to pay $5,000 for said purchase, which was never paid.

In the absence of French, detained at the South by the civil war, Hay fraudulently collected the whole amount of said debts, still standing in his name.

The Bill prays for an account and payment less the $5,000.

*Answer, page* 9.

With much irrelevant matter, the answer sets up the condition of the road owned by French and one Lenox; that it was indebted over $145,000, $105,000 of which was secured by deeds of trust.

That French, with the money of Hay, bought up the $40,000 floating debts, which were reduced to judgments, and stood in Hay's name.

That the sale by Hay to French was conditional upon his payment of the $5,000, which was never paid.

That French absconded South early in the spring of 1861, carrying off the rolling stock of the road.

That in April, 1862, at a sale of the road and franchises, under one of the deeds of trust, Hay purchased for $12,500, to protect himself, and formed a new company under the code of Virginia, and received a certain proportion of its stock, which he sold afterwards; and that said judgments against the old company, on all of which French was personally liable, were entered satisfied. That Hay recovered nothing on them in any other way.

Numerous exhibits are appended.

*The ultimate facts.*

1. The A. & W. Railroad Company was chartered in 1854, (p. 109,) and never had but three stockholders—J. S. & R. S. French and Walter Lenox. The first of whom, who always claimed and still does to be president, (French's ans. to question 38, p. 82,) afterwards owned three-fourths and W. Lenox one-fourth of the stock. The road terminated south of the Potomac, was badly built, poorly equipped, worse managed, and never paid running expenses.

2. The company had executed a deed of trust to Washington city for $60,000. One to Fowl, Snowden & Co. for $15,000, and one to Benjamin Thornton for $30,000, and owed a floating debt of over $40,000. (Pp. 7, 26, 121.)

3. Hay advanced to French $5,000, to purchase up the floating debts, as per bill and answer, and page 40. For these French was personally liable. (French's answer to int. 27th, p. 80.) By other answers he admits liability on all.

4. These were sold to French, by Hay, August 24, 1860, on the express condition that they were to be first paid for; as appears by Exhibit C, as follows:

"For and in consideration of the sum of five thousand dollars, with interest from this date, I hereby assign and transfer to James S. French, of Alexandria, Virginia, all the judgments, notes, or claims which I hold against the Alexandria and Washington Railroad Company, or against said railroad company, indorsed by James S. French and Walter Lenox, or by either of them, *to be held by the said French, his heirs and assigns, as his individual property upon his payment to me of the above-named sum of* $5,000, *with interest from this date.*

"Given under my hand and seal this 24th day of August, 1860.

(Signed) "A. HAY.

"Witness, THOMAS HAY." (P. 5.)

With this French also received from Hay the following:

"*Complainant's Exhibit 'B.'*

"To all whom it may concern: Be it known, that I, Alexander Hay, of the city of Philadelphia, do hereby constitute and appoint James S. French, Esq., of Alexandria, Virginia, my true and lawful attorney, for me and in my name, to make such disposition as he may deem proper of all the judgments, notes, or claims which I hold against the Alexandria and Washington Railroad Company, or against said company, endorsed by James S. French and Walter Lenox, or by either of them, to take all necessary steps for collecting the same, or pledge or hypothecate the same, or compromise or sell the same, on such terms as he shall deem proper, and do with them whatever he shall choose, as fully as if they were his individual property; and I do hereby,

by these presents ratify and confirm the same as fully as if I were present acting in person.

"Given under my hand and seal this 24th day of August, 1860.

(Signed) "A. HAY. [SEAL.]

"Witness by ANDREW J. BOSSWELL.

"THOS. HAY." (P. 5.)

See also French's answer to cross-int. 16, p. 79.

5. No part of this $5,000 was ever paid. (See bill answer and French's answer to ques. 20, p. 79. His answer to ques. 88, p. 91.)

6. French went south in May, 1861, and did not return until the end of the war. Could not, he says. Would not, Hay claims. He ran off the rolling stock of the road in the fall, and sold it at the South for $11,000. (Ans. of French to ques. 113, p. 95.)

7. In January, 1862, Lenox, the trustee in the deed of trust to Thornton, being also at the South, a petition was filed in the circuit court of Alexandria, to appoint a substitute, and such action was had that on the 10th of April following the new trustee sold the road, with the franchises of the company, to Hay for $12,500.

Stewart's Dep., pp. 125–6, &c.

8. Under the code of Virginia, (pp. 356–7, secs. 28–9,) Hay formed a new company, called the Washington, Alexandria and Georgetown Railroad Company, and issued stock, by which it would seem that Hay's and Thornton's claims were absorbed, or so regarded by them and the other stockholders of the new company. That Hay's 780 shares were ultimately sold to one Martin at 80 cents, and that he actually realized less than $56,000, and that thereupon the judgments so holden by him against the old company were entered satisfied.

Stewart's Dep., pp. 126–7, &c.

Dep. of French and O. A. Stevens.

9. On French's return to Alexandria, after the war, he commenced a suit in the name of the Alexandria and Washington Railroad Company *vs.* The Washington, Alexandria and Georgetown Railroad Company *et al.* to recover back the road and franchises, on the ground that the trustee sale to Hay was invalid; this was in 1866, as is thought. (See 4th par. of Ex. H. A. B. No. 2, p. 110.) Said suit had ripened to judgment in his favor before he was cross-examined in this case. (See his answer to question 89, p. 91.)

10. December 6, 1867, French sold and transferred to S. M. Shoemaker all right, title and interest, all claims and demands, in, unto and upon the road, franchises, &c., of the Alexandria and Washington Railroad Company, as chartered, &c. (Exhibit H. A. B. No. 1, p. 108.)

And on the same day he joined, with Lenox, Shoemaker, and others, in an extended stipulation under seal, as to the terms and conditions of a reorganization of the old Alexandria and Washington Railroad Company. (Ex. H. A. B. No. 2, p. 110.)

11. On the 3d day of April, 1869, he sold and transferred the same to Robert S. Baldwin, with apt words describing his claims as judgments.

Ex. H. A. B., 3 and 4, pp. 111 and 112.

*On these Facts I Claim*

FIRST.

The plaintiff had an ample remedy at law.

*a.* He wanted no discovery.

*b.* Had to pursue no lien.

SECOND.

He can have no relief on his bill as framed.

*a.* The *gravamen* of the bill is, that the defendant col-

lected the judgments in the ordinary way, which the evidence denies.

*b*. The bill should have fully disclosed the actual transaction, so that if it could be maintained at all, a full account of all expenditures could be taken, and all the equities settled.

THIRD.

From the plaintiff's fiduciary relation to the Alexandria and Washington Railroad Co., he could acquire no interest in judgments and debts against it, so that he could enforce them.

FOURTH.

The purchase of the debts against the railroad company by the plaintiff was conditional. He did not perform the condition, and acquired no title to them.

FIFTH.

If the plaintiff acquired any right to the debts against the Alexandria and Washington Railroad Company he parted with it before this suit was brought.

If not before suit brought, he sold it before the hearing, and can have no relief.

SIXTH.

If the plaintiff had such an interest in the judgments described in his bill as would entitle him to maintain a suit, it must be upon the ground that the defendant in all that he did, whereby he realized on them, was the agent of the plaintiff, which is not true.

*a*. The plaintiff claims that in violation of his rights the defendant took advantage of the fact that the judgments stood in his name, to collect and fraudulently convert their proceeds to his own use.

*b*. When the action of the defendant in the premises came

to the notice of the plaintiff, instead of ratifying it, he repudiated it wholly, and yet claims the proceeds of it.

*c.* The defendant realized on said judgments by the sale of the stock of the new corporation. The plaintiff caused that corporation to be judicially declared a nullity, rendering the defendant liable to his vendee for failure of the title of the thing sold.

SEVENTH.

If by the action of the defendant said judgments were legally discharged and ratified, then did the plaintiff recover his road and franchises, fully relieved of the same, and was himself discharged from all personal liability on account of them, and so he has received the full benefit of said judgments.

EIGHTH.

If the action of the defendant did not discharge said judgments, then do they survive to the plaintiff unimpaired, and he recovered back the railroad and franchises much enhanced in value, thereby increasing the value of his judgments.

In every view of this case it is submitted that the plaintiff must fail.

A. G. RIDDLE, *for Defendant.*